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THE GOVERNMENTS OF EUROPE

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THE GOVERNMENTS OF EUROPE

BY

WILLIAM BENNETT MUNRO, Ph.D., LL.B.

JONATHAN TRUMBULL PROFESSOR OF AMERICAN HISTORY AND GOVERNMENT IN HARVARD UNIVERSITY

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To
the best of all my teachers,—the
undergraduate students
in Harvard College

"I am tempted to believe that what we call necessary institutions of government are nothing more than institutions to which we have grown accustomed, and that in matters of political framework the field of possibilities is much more extensive than men living in their various countries are ready to imagine."

Alexis de Tocqueville.

PREFACE

The interest of America in the governments of Europe has been considerably stimulated by the events of the past dozen years. Washington said in his Farewell Address that "Europe has a set of primary interests to which we have none, or a very remote, relation"; but that statement has now ceased to be true. Today our relations with the old continent have become everything but remote. Our newspapers prove it by the amount of space which they devote to the sinuosities of European politics. A budget speech in the House of Commons gets into the headlines nowadays, and is no longer relegated to a pert paragraph on one of the inner pages. The election of a German president or the fall of a French ministry sends its echoes into the stock market of New York and the wheat pit at Chicago. We are slowly learning to think internationally—and it is about time.

For this reason it would seem desirable that Americans should know something about the various European governments, how they are organized, what sort of political machinery they use, and wherein their governmental methods differ from those of the United States. It is more than desirable: it is essential to the intelligent reading of the daily news from overseas. For without some knowledge of what a government is, it is impossible to understand what a government does. The aim of this book, therefore, is to describe in a general way and in simple language the antecedents, organization, and processes of government in the chief European countries, more particularly in Great Britain, France, Germany, and Italy, but with some attention to Switzerland, Russia, and the succession states as well.

The subject is a big one, with all sorts of ramifications, and I have made no attempt to deal with it in an exhaustive way. My aim has merely been to provide, for the general reader and the college student, a pen-picture of these governments in broad outline, in silhouette as it were. I have tried to show how they came to assume their present forms, what principles they rest upon, what agencies they use for the making of laws, the execution of public policy and the administration of justice, what influence is exerted upon them by political parties, and what outstanding problems they are now trying to solve. Surely a big enough task for any man's book! Obviously it has been imperative that outstanding features be given the right of way, and that details be either relegated to the footnotes or omitted altogether. At the close of each chapter, however, there is a short list of accessible books to which the reader may refer if he desires to study the details of governmental practice in the various countries.

I have a good many obligations to place on record. Mr. I. G. Gibbon, C.B.E., of the British Ministry of Health, and Mr. Maurice L. Gywer, C.B., of the Inner Temple, barrister-at-law, late Fellow of All Souls College, Oxford, were good enough to read the manuscript of the chapters on Great Britain and to give me helpful suggestions on every one of them. I sincerely appreciate and gratefully acknowledge the assistance which these two highly competent scholars have accorded me in my attempt to describe the world's most remarkable government in its present-day operations. To my colleagues, Professors Henry A. Yeomans, Arthur N. Holcombe, George La Piana, and Dr. Raymond L. Buell, as well as to Professors John A. Fairlie of the University of Illinois, Edward M. Sait of the University of California, Malbone W. Graham of the same institution (Southern Branch), F. A. Golder of Leland Stanford University, and Dr. Jacques H. Pillionnel of Geneva, Switzerland, on all of whom I have inflicted portions of the manuscript or proofsheets, I am indebted for many suggestions of great value. They have steered me from numerous errors, a service for which my readers should be no less grateful than I am. As for the errors that remain, I can only remind the critical that "Who faulteth not, liveth not; who mendeth faults is commended."

William Bennett Munro.

June 5, 1925.

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THE GOVERNMENTS OF EUROPE

THE GOVERNMENTS OF EUROPE

CHAPTER I

THE NATURE OF THE BRITISH CONSTITUTION

En Angleterre la constitution . . . elle n'existe pas!—*Alexis de Tocqueville.*

The mother of all constitutions.

The art of free government has been the greatest contribution of the Anglo-Norman race to the civilization of the world. Civilized man drew his religious inspiration from the East, his alphabet from Egypt, his algebra from the Moors, his art and literature mainly from Greece, and his laws from Rome. But his political organization he owes mostly to English conceptions, and constitutional systems all over the world are studded with words and phrases which can be explained only by reference to the theory and practice of English government.[1] It is true, of course, that representative government has sprung from the soil in other countries, but it has usually withered and died. The British constitution is the mother of constitutions; the British parliament is the mother of parliaments. No matter by what name the legislative bodies of other countries may be known, Congress or Chamber, Reichstag or Rigsdag, Storthing or Sobranje, they all bear the impress of their maternity. It is hardly an exaggeration to say, therefore, that the democratization of the entire civilized world, largely through the influence of Anglo-Norman leadership, is the most conspicuous fact in the whole realm of political science. Not to know and appreciate this fact is to miss the first clue to an understanding of the science of government.

In the history of mankind only two races have made notable and permanent contributions to the art of governing great popu-

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[1] A. F. Pollard, *The Evolution of Parliament* (London, 1920), p. 3.

The Roman and English contributions compared.

lations—the Romans and the English. Ancient Rome elaborated a scheme of government and a system of law which for centuries exercised a profound influence in all regions of the old world, and even yet this influence has been by no means obliterated. But Rome's political evolution carried her from a popular government to an absolute one, from a republic based upon the doctrine of popular sovereignty to an imperial absolutism. Therein it ran counter to the current of progress. The development of political institutions in England went in precisely the opposite direction. England began as an absolutism and evolved into an imperial democracy. Her political institutions, by reason of their harmony with the needs of an advancing civilization, have been far more closely and more widely copied than were those of Rome.

A striking example of political evolution.

Nor is it merely because of this world-wide influence that the constitution of Great Britain ought to be studied,—and studied before that of any other country. It is the oldest among the existing constitutions of the world. With the exception of the dozen years in which Oliver Cromwell quitted his farming and served as President of the English Republic under the title of Protector of the Commonwealth, its general contour has undergone no drastic change for at least five centuries. Nowhere else has the world witnessed a political evolution so prolonged and so relatively free from great civil commotion. There have been revolutions in England, not all of them bloodless, but they merely cleared the obstructions out of the channel. They did not deflect the main current of political progress. The new dispensation began where the old left off. After each upheaval the process of constitutional evolution was speeded up. So, while it is possible to mark out epochs or stages in the development of the British constitution, this is done by noting differences after long periods rather than by coming upon sudden transformations at definite times.[1]

The chief reasons for the early development of popular government in England.

Three reasons account for this remarkable smoothness with which the course of British constitutional development has been run. The first is to be found in the geographical isolation of Britain from the mainland of Europe. Nothing but a narrow strip of channel separates England from the continent, but these

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[1] George Burton Adams, *The Origins of the English Constitution* (New Haven, 1920), p. 43.

1. Geographical isolation.

twenty miles of water have afforded a measure of defense which no other great country of Western Europe has enjoyed.[1] During many centuries this protection obviated the need for a large standing army and thus withheld from the British monarchs the one weapon with which they might have crushed popular liberties as did the Bourbons in France and the Hapsburgs in Spain. The English kings claimed a right to maintain a standing army, but they never succeeded in making good this claim, and the Bill of Rights eventually disposed of it by an express declaration that "the maintenance of a standing army in time of peace without the consent of parliament is contrary to law." England's insular position is by far the most important clue to a proper understanding of her constitutional history. Shakspere was not unmindful of this fact when he apostrophized his native island as

> "This precious stone set in a silver sea,
> Which serves it in the office of a wall,
> Or as a moat defensive to a house
> Against the envy of less happier lands."

2. Racial genius.

In the second place the undisturbed political evolution of England has been due to the genius of her people. The fusion of racial strains—Celt, Saxon, Norman and Dane,—gave to the British islands a breed of men in whom the ardor for free political institutions was strong. So strong did it prove to be, in fact, that it ultimately became the root of Britain's difficulties with her own colonies The people of the British isles, and their descendants wherever scattered, have in all ages been impatient of improvised, uncertain, or dictatorial authority; on the other hand they have had at all times an innate respect for political authority based upon their own consent.

3. Constitutional flexibility.

And something, finally, must be attributed to the happy accident that no rigid constitutional framework was devised in the earlier stages of British history to hold the course of political development in check. The Briton has never had much use for political abstractions. He has been openly averse to a system of government based upon fixed principles and involving the application of exact rules. For this reason the British constitution has never been permitted to assume a stereotyped form. It has remained unsystematized, uncodified, and to a degree indefinite.

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[1] The only other European country which has had a relatively uninterrupted political development, akin to that of England, is Switzerland. Here also a partial explanation is to be found in the natural facilities for defense against armed invasion.

What "the constitution" means to an American.

The American student who walked into a great London library some years ago and amused the attendants by asking for "a copy of the British constitution," was doing a perfectly natural thing from his own point of view. He knew that in his own country there was such a constitution; as a schoolboy he had probably been required to memorize it. In every branch of public activity he had heard its provisions quoted as the last word, the supreme law of the land. To his way of thinking it was inevitable that a constitution should be a document, concise in form, orderly in arrangement, and definite in its terms,—in other words an organic statute upon which the government rests. But this mental picture is not accurate, even as respects his own country. The real constitution of the United States includes not only the document which the Fathers of the Republic framed in 1787, but all that has been read into this document by the courts and all that has been read out of it by Congress during the past hundred and thirty-odd years. When James Bryce asserted, thirty years ago, that the constitution of the United States is "so concise and so general in its terms that it can be read in twenty minutes," he did not mean to imply that anyone could obtain even the most rudimentary conception of American government in that length of time. By merely reading the American constitution one would learn nothing about state government, local government, party organization, and a dozen other features which are of the greatest importance in the American political system. To read the American constitution in its wider sense, would take not twenty minutes but a dozen years.

What "the constitution" means to an Englishman.

Great Britain has never had a constitutional convention like the one that met at Philadelphia in 1787. The British constitution is the product of continuous and almost imperceptible accretion. That is why a distinguished French publicist once declared that it did not exist at all. The British constitution is the result of a process in which charters, statutes, decisions, precedents, usages, and traditions have piled themselves one upon the other from age to age. It is, to use Sir William Anson's metaphor, a somewhat rambling structure, a house which many successive owners have altered to suit their immediate wants or the fashion of the time. It bears the marks of many hands. Its provisions have never been codified and put into an orderly form, and probably never will be. The task would be virtually impossible, for not only do the usages and traditions cover a wide range, but many of them are not sufficiently definite to be set down in writing. They are continually in process of change, new customs replacing older ones. Precedents are being made almost daily, and these precedents solidify into "customs of the constitution." Some of these customs of the constitution are now so firmly entrenched that everyone accepts them as inviolable; others are by no means universally recognized, while others, again, are subjected to varying interpretations. It is a fixed and unquestioned usage of the British constitution, for example, that a ministry must resign when it loses the support of a majority in the House of Commons, but it is not a universally accepted usage that it must resign on any adverse vote. The writer who set out to explain just what constitutes "want of confidence" in a ministry would have a hard time doing it. Moreover, a codification of the British constitution, if finished today, would be out of date the day after tomorrow, for the whole thing is a growing organism which does not stand still even for a single hour. "The English," says a French critic, "have simply left the different parts of their constitution wherever the waves of history happen to have deposited them."

The difference has been over-emphasized.

The difference in this respect between the British and American constitutions, however, has been greatly over-emphasized by reason of the tendency to use the same words in dissimilar senses. If we use the term constitution to include the entire body of written and unwritten rules by which the fundamentals of government are determined, then both Great Britain and the United States are alike in possessing something that answers this description. In both countries this aggregation of fundamental rules, whether written or unwritten, is constantly developing, broadening, changing. The constitution of the United States, including not only the original document but the vast mass of statutes, judicial decisions and usages which have grown up around it, is also a live, growing organism which never stands still for a single day. The founders of the American Republic did not encase a living heart in a marble urn. They did not place the twentieth century in bondage to the eighteenth. The American who spends twenty minutes in reading his national constitution may get a better idea of the fundamental rules which govern his country today than does the Englishman who spends as many hours in studying Magna Carta, the Bill of Rights, the Parliament Act, and the Irish Treaty; but neither American nor Englishman can in this way gain any comprehensive idea of the political institutions under which he lives. The student who desires to follow Machiavelli's advice and concern himself with the truth of things rather than with an imaginary view of them must go far beyond the formal documents in either case. An account of the real constitution in any country is like the photograph of an individual: no matter how good a likeness it may be today, it will not be a good likeness twenty or thirty years later. The general features of the individual, as of a government, may remain unaltered, but their expression, their relation, and their character will have perceptibly changed.

Is the English constitution "unwritten" as we are so often told?

Too much emphasis, again, has been placed upon the distinction between written and unwritten constitutions. Other countries, we are told, have written constitutions; Britain has an unwritten one. But this assertion, although it rather clumsily points to something in the way of a real distinction, is not altogether accurate. A substantial portion of the fundamental law by which Great Britain is governed has been put into writing. The relations between England and Scotland, for example, and between England and Ireland, the succession to the crown, the qualifications for voting, the organization and procedure of the courts,—all these and many other foundamentals of British government are on record in black and white.

The elements in the British constitution.

1. The landmarks.

What, then, is the constitution of Great Britain? It consists, one may fairly say, of five elements, not all of which lend themselves to precise definition. First, there are certain charters, petitions, statutes and other great constitutional landmarks such as Magna Carta (1215), the Petition of Right (1628), the Bill of Rights (1689), the Act of Settlement (1701), the Act of Union (1707), the Great Reform Act (1832), the Parliament Act (1911), and the Government of Ireland Act (1922). But all of these put together cover a very small portion of the fabric of British constitutional law. Second, there is the great array of ordinary

2. Statutes.

statutes which parliament has passed from time to time relating

3. Judicial decisions.

4. The common law.

2) [illegible]

5. Usage.

to such things as the suffrage; the methods of election, the powers and duties of public officials, and the routine methods of government. In point of time these statutes range over many centuries. Third, there are judicial decisions interpreting all the charters and statutes, explaining the scope and limitations of their various provisions. They correspond to the long line of decisions made by the courts on constitutional questions in the United States,—except that the line is longer and the cases not so numerous. Fourth, it is often said that the common law is a part of the British constitution. By the common law is meant that body of legal rules which grew up in England, apart altogether from any action of parliament, and eventually gained recognition throughout the realm. Such securities for personal liberty as the British constitution affords to those who live under it were brought into being by the common law rather than by statute.[1] Certain legal traditions are embalmed in the common law, for example, the right to a jury trial in criminal cases, and these may fairly be said to form part of the British constitution in its broader sense. The common law, like statutory law, is continually in process of development by judicial decision. Finally, there are the usages which in England as in other countries have gradually hardened and now exert a compelling influence on various branches of the government. Usage plays a larger part in the workings of the British constitution than in the constitution of any other country because the British constitution is older and the usages have had more time to grow. A large part of the British governmental system, in fact, rests on usage and not upon laws or judicial decisions—including such vital things, for example, as the political functions of the crown and the responsibility of the ministers to the House of Commons.

A definition of the British constitution.

So what is the constitution of Great Britain? It is a composite of charters and statutes, of judicial decisions, of common law, of precedents and usages and traditions. It is not one document, but many. It is not derived from one source, but from several. It is not a completed thing, but a thing which is still in process of growth.

How it can be changed.

Being in process of growth means that it can be changed, and the British constitution can be altered at any time by a simple act of parliament. Over every provision of the constitution, howsoever derived, parliament is legally supreme. Parliament can alter any feature of British government at will. There is no charter or statute, however fundamental, that it cannot change, no judicial decision that it cannot set aside, no usage that it cannot terminate, and no rule of the common law that it cannot overturn. All governmental powers rest ultimately in the hands of parliament. It is desirable that every student of the British political system should firmly grasp this legal principle at the outset. The British parliament is as nearly sovereign as any mundane body can be. The only thing it cannot do is to bind its successors; it cannot interrupt or put an end to the process of constitutional change.

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[1] To this, however, there are some notable exceptions, for example the Habeas Corpus Act of 1679.

Constituent and lawmaking power are thus identified.

In Great Britain, accordingly, there is no legal difference between *constituent* authority and *lawmaking* authority such as exists in the United States. In the national government of the United States the lawmaking power rests with congress; but constituent power, that is, the power to amend the constitution, does not come within the scope of congressional authority. To amend the constitution of the United States is far more difficult than to amend a statute, as is shown by the fact that although congress passes several hundred laws at every session only seven constitutional amendments have been ratified during the past one hundred years. Parliament is supreme in both spheres; it is both the lawmaking and the constituent authority. Even the succession to the throne, as established by the Act of Settlement, can be changed by a simple statute if parliament desires to change it.

Can an act of parliament be unconstitutional?

There is a marked difference, therefore, between the concept of unconstitutionality in the two countries. When we say in the United States that some action of congress is "unconstitutional" we mean that it is contrary to the express or implied provisions of the national constitution and as such may be declared invalid by the courts. In that sense no act of parliament can be unconstitutional. When an Englishman speaks of any parliamentary action as unconstitutional, he means that it is opposed to the existing traditions of British government, a departure from long-standing practice, an objectionable innovation. If parliament, for example, were to pass a law permitting civilians to be tried by courtmartial in time of peace, he would undoubtedly cry out that such action was unconstitutional. Why? Because he would regard it as contrary to the British way of doing things. But no Englishman would think of calling upon the courts to nullify such a law or imagine for a moment that any court, save the high court of parliament itself, could set the law aside. No British court, under any circumstances, can nullify an act of parliament, for an act of parliament is the last word in British government.

The reputed flexibility of the British constitution.

This unrestrained supremacy of parliament, this power to amend the constitution by the process of ordinary lawmaking, is said to give the British political system a degree of flexibility which is not found in countries where the constituent and the lawmaking power are lodged in different hands. English writers have been in the habit of dilating upon this asserted virtue of their constitution which, they claim, permits it to be adapted more readily to new conditions than is possible in any other country. Many years ago Walter Bagehot, in his brilliant sketch of English government, dwelt at length on this theme. Parliament, he said, could abolish trial by jury, pass bills of attainder, confiscate private property without compensation, take the suffrage away from all but taxpayers, and sell off the British dominions. In a strictly legalistic sense this is doubtless true. But after all there is little profit in discussing an exercise of power based upon the assumption that parliament had transformed itself into a madhouse. For everybody knows that there are no conceivable circumstances under which parliament would do any of the aforementioned things so long as its members retained their senses. Legislators are themselves the creatures of tradition, and traditions are stronger than laws, stronger than the provisions of written constitutions. The written constitution of the United States forbids the taking of private property without just compensation, but that is not the reason why private property remains unconfiscated in America. Private property is just as inviolable in Great Britain although it is protected by no formal guarantees. The real reason for its inviolability in both countries is the same, namely, the existence of a consensus of opinion that to take a man's property for public use without compensation is in its very nature arbitrary, unfair, and contrary to the spirit of free government.

The frequency with which the constitutional methods and practices of a nation are changed does not depend wholly, or

Upon what does flexibility depend?

Not upon the process of amendment.

even largely, upon the simplicity of the amending process. In Italy and Spain, although both these countries have written constitutions, the process of amendment is just as easy as it is in Great Britain. In France it is almost as easy. Yet despite the technical facility with which the Italian, Spanish and French parliaments can pull their constitutions apart, none of the three countries has had so many constitutional changes as some individual American states like Oregon and California, in which the process of amending the constitution is very much more complicated but goes on continually.

It depends upon: (a) the breadth of constitutional provisions.

The flexibility of a constitution depends on two things: first, the nature of its provisions, and second, the attitude of the people toward constitutional amendments. If the provisions of a constitution, whether written or unwritten, are broad enough to permit considerable changes in governmental methods without any alteration in the words, then the constitution possesses flexibility as an inherent virtue. This is true of the constitutions of Great Britain and the United States alike. If, on the other hand, the constitution is prolix in its enumeration of details, as are the constitutions of various American states, there is no way of adjusting the document to new governmental needs except by amending its provisions. This does not mean, however, that such constitutions are necessarily more rigid than those of the other type. Whether they are or not depends upon the attitude of those who possess the constituent power. On the face of things the constitution of California is far more rigid than that of Great Britain, but it is in fact more easy to change and it is changed more frequently. This is because rigidity, or the absence of it, depends more upon the political habits and temperament of the people than upon the ease or difficulty with which the formal requirements can be met. A conservative people, with a constitution couched in broad terms, will make relatively few changes in it over considerable periods of time. On the other hand if political traditions are unstable, and if the terms of the constitution are so precise that they leave no leeway for change by interpretation, there will be an annual procession of amendments, no matter how hard the process of amending may be—yes, even though it necessitates bringing the whole people to the polls in order to get an amendment adopted.

(b) the traditions of the people.

Let it be repeated: the unique feature of the British constitu-

The distinctive feature of the British constitution.

tion is not its unwritten character, for a considerable part of it is in writing. Nor is it distinguished from other constitutions by the fact that it can be amended through the ordinary channels of lawmaking, for the same is true of the Italian and Spanish constitutions. Nor yet is it remarkable for its flexible character inasmuch as the elasticity of a constitution depends upon the political temper of the people, and in Great Britain this happens to be conservative. Even revolutions are conservative in Great Britain. The unique feature of the British constitution is to be found in its curious estrangement from the actual practice of government. In all other countries the constitutional provisions are measurably in tune with the facts. In Great Britain they are not. In the British constitution, as some one has said, "nothing is what it seems or seems what it is." The age-long adaptation of practice to convenience has left a gap between constitutional theory and governmental practice such as exists in no other land. Institutions, forms, and ceremonials remain constitutionally established, although their practical importance has long since departed. Functions are performed by one official, or body of officials, in the name of another. Powers which for centuries have not been exercised, and doubtless never will be, continue to be vested in established authorities. That is why English writers, in describing their own government, devote half their chapters to a portrayal of what it is supposed to be, and the other half to an explanation that it is in reality something very different.

The gulf between theory and practice.

England began her political history as an absolute, or nearly absolute monarchy. But England has become, in the course of the past ten centuries, a limited monarchy, a veiled republic. Yet the theory of absolute monarchy has never been entirely shaken out of the constitution, and the crown is still the source of all authority. In legal theory all actions of the government are the actions of the crown, performed in the name of the crown. All officers of government are the servants of the crown. The ministers of state are the advisers of the crown, summoned and dismissed at the royal discretion. No statute is valid without the crown's assent; no appointment is ever made (not even that of the prime minister himself) save in the name of the crown. It is His Majesty's navy, His Majesty's post office, His Majesty's courts, His Majesty's government, and even His Majesty's "loyal opposition" in parliament. The ancient prerogatives of the crown in assenting to laws, in making appointments, in dispensing justice have never been formally taken away. But in reality they have been so curtailed and circumscribed by usage and traditions that they are today little more than empty formulas. All political power has been shifted during these ten centuries from the king to the people acting through their chosen representatives in parliament.

The essential and peculiar characteristic of the British monarchy, therefore, is that the king has retained all the outward symbolism of absolute power although no longer possessing the substance of it. This unreality of the British constitution, this wide divergence between the theory and the facts, is the feature that makes it difficult to analyze and describe. One is tempted to set forth the law, explaining that it is not the practice. Then, on second thought, it seems easier to set forth the practice, explaining that it is not the law. In either case there is bound to be some confusion in the reader's mind. Well might the impatient Tocqueville shrug his shoulders and exclaim: "In England, the constitution . . . there is no such thing!"

The general subject dealt with in this chapter has been discussed by many writers on English constitutional history and government. The best brief surveys may be found in President Lowell's *Government of England* (2 vols., New York, 1908), Vol. I, pp. 1-15 and in Sir William R. Anson's *Law and Custom of the Constitution* (fifth edition, Oxford, 1922), Vol. I., pp. 1-13. Attention may also be called to the chapter on "The Salient Features of the English Constitution" in Sir J. A. R. Marriott's *English Political Institutions* (new edition, Oxford, 1925), and to the introductory chapter in Sir Sidney Low's *Governance of England* (new edition, New York, 1917), pp. 1-14. A much more extensive discussion is given in A. V. Dicey's *Law of the Constitution* (eighth edition, London, 1915), especially chapters i-ii, xiv-xv, and in note v of the appendix. Jesse Macy's *Nature of the English Constitution* (New York, 1911) is a historical consideration of the subject, a very stimulating and readable one. On the nature of constitutions in general there is a good chapter in W. F. Willoughby's *Government of Modern States* (New York, 1919), pp. 93-106. All the books mentioned at the close of chapter ii (*below*, pp. 35-36) also shed light, directly or indirectly, upon the nature of the English constitution.

CHAPTER II

HOW THE CONSTITUTION DEVELOPED

> Prudence indeed will dictate that governments long established should not be changed for light or transient causes; and accordingly all experience hath shewn that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.—*The Declaration of Independence.*

The character of British institutional growth.

"It has been a leading characteristic of English constitutional history," said Woodrow Wilson, "that her political institutions have been incessantly in process of development, a singular continuity marking the whole of the transition from her most ancient to her present forms of government." The development of the English constitution is not a history of breaks or of new establishments, or of successive new creations of instrumentalities of legislation and administration. All the way through it is a history of almost insensible change, of slow modification, and of unforced, almost of unconscious development.[1] Great changes in the spirit of English government have occurred from century to century; but they have been brought about so gradually that the process has hardly been perceptible. For this reason one cannot assign definite dates for the various stages as in France or the United States. It must suffice to say that the transition took place during a certain century, or, sometimes, in the course of a designated reign. The reader of this chapter will not be asked to remember a lot of historical dates, for in no other country are exact dates so little worth remembering.

The British islands.

The island of Great Britain, which includes England, Wales, and Scotland, has an area of about eighty-eight thousand square miles.[2] It is about the size of the single state of Minnesota. Its present population is about 44,000,000. A little to the westward of the main British island lies Ireland, with an area of about thirty thousand square miles (considerably less than that of Cuba) and a population of only four and a half millions. When the island of Great Britain first appeared on the horizon of recorded history it was inhabited by Celtic tribes, dark-haired invaders from the mainland of Europe who had crossed the Channel several centuries before the dawn of the Christian era. Concerning the political organization of ancient Britain we know nothing except that each tribe has its own chief.[1] Most of the tribes came from the same parent stock but this did not prevent their being continually at war with one another. Julius Cæsar crossed from Gaul to Britain with an army in 54 B. C. but did not attempt a permanent occupation of the country. It was not until nearly a century later that the Emperor Claudius undertook the actual conquest of Britain and succeeded in establishing a Roman province there.

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[1] *The State* (New York, 1918), p. 183.

[2] Ireland has never been regarded, geographically, as a part of Great Britain, hence the term "United Kingdom of Great Britain and Ireland."

The Roman conquest and withdrawal.

The Romans occupied the main island as far northward as the present Scottish border and westward to the mountains of Wales. They did not conquer Ireland. Their occupation of England continued for nearly four hundred years during which time they built great highways, established towns, and developed a considerable trade. But they did not colonize the country with Roman settlers, and when they withdrew in the early part of the fifth century their political institutions soon disappeared. They made no more impression upon the language, religion, and temperament of the people than the British have done during their three hundred years of activity in India. These four centuries of Roman tutelage sapped the war-spirit of the country, however, and when the Romans departed the people found themselves without means of defence against their enemies.

The coming of the Anglo-Saxons.

It was not long before marauding tribes from across the North Sea—the Angles and Saxons—descended upon the British coast and effected a landing. They arrived in large numbers, drove the people westward, and occupied the greater part of England. Settling on the evacuated lands these various Anglo-Saxon tribes established seven districts or "kingdoms,"—East Anglia, Mercia, Northumbria, Kent, Sussex, Essex, and Wessex, each with its own chief or leader. Then followed a period of inter-tribal war in which the more powerful absorbed the weaker, until the heptarchy was reduced to three kingdoms and ultimately to two. Finally, the kingdom of Wessex gained supremacy in the ninth century and the English nation was formed.

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[1] Among these Celtic groups in Britain the most important were (a) the Gaels or Gaelic people who were the first to come but were pushed by later arrivals westward to Ireland and northward to the Scottish highlands, (b) the Britons who moved into Wales, and (c) the Belgæ who occupied the greater part of England.

The government of Saxon England: The king.

Thus *princeps* became *rex*. It was not by voluntary union but by conquest. The smaller kingdoms did not wholly lose their identity, however; they became sub-kingdoms or shires of the Saxon realm, with an earl or ældorman at the head of each. "At best," says Professor Haskins, "England before the Norman conquest was a loose aggregation of tribal commonwealths divided by local feeling and the jealousies of the great earls."[1] The position of the king was poorly defined; his powers depended in large measure upon his own personal strength or weakness. It had become hereditary in the sense that the kingship descended in the same family, but the Witan apparently had power to choose an heir other than the eldest son. The Saxon king was the leader of his people in war; he made laws or "dooms" with the concurrence of his Witan, and he saw that these decrees were enforced. He also presided over the assemblies or synods of the church.

The Witan.

The Witan (Witanagemot), or assembly of wise men, was the king's great council. Its exact organization and powers we do not know, but it had a variety of functions including the right to be consulted by the king on important matters. Only when a weak king was on the throne did it count for much as a governing body. Presumably it was made up of the chief officers of the royal household, the bishops and abbots, the ældormen of the shires, and the other magnates of the country.[2] The king might summon whom he pleased, hence the Witan varied in size from time to time. There was no national capital; the Witan met periodically in different parts of England. The king usually presided at its meetings and directed its business. In theory, at least, the powers of the Witan seem to have included the assenting to new laws, the making of treaties and alliances, the approval of taxes or levies, and the regulation of ecclesiastical affairs. It was thus the high council of both state and church, and also acted as a high court for the trial of important cases.

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[1] *The Normans in European History* (Cambridge, 1915), pp. 5-6.

[2] In the Witan held at Winchester in 934, for example, there were present two archbishops, four Welsh "kings," seventeen bishops, four abbots, twelve ældormen, and fifty-two royal thanes (ministri regis). F. W. Maitland, *Constitutional History of England* (Cambridge, England, 1908), p. 56.

The Witan as a check on the king.

The Witan contained no elective members, hence it was not a representative body, but it was nevertheless looked upon as reflecting the national will and became a potential check upon the arbitrary power of the king. Not an absolute limitation upon the royal authority, however, for if the king possessed a strong will and a capacity for government, he packed the Witan with his own supporters and made it do his bidding. In any event the king and the Witan were *national* authorities and as such helped to give the country a small degree of national consciousness which otherwise would have been lacking.

Saxon local government.

1. The township and the hundred.

During the Saxon period the great mass of the people lived in little villages and made their living from the land. Each village, with the land belonging to it, formed a tun or township, which was the smallest unit of English social, political, and economic life. Each township had its own local government, which usually consisted of a township "mote" or town meeting and certain elective officers, chief among whom was a reeve. Groups of townships were formed into hundreds, or districts which seem to have contained a hundred warriors or a hundred heads of families. Each hundred, likewise, had a mote or local assembly which appears to have been made up of the reeve "and four good men" from each township.

2. The shire.

Finally, there was the shire with its shiremote and ældoman. There is some reason for believing that in its earlier stages the shiremote was a popular assembly of all the free tribesmen, but in time it came to be made up of the larger landowners and the officials of the church, together with the reeves and the other representatives of the townships. The shiremote met twice a year, usually under the leadership of the ældorman who was appointed by the king. There was also a shire reeve or sheriff, similarly appointed, and in the course of time this official displaced the ældorman as the presiding officer of the shire assembly. As each shire was usually a diocese the bishop was usually present to declare the law of the church and to look after its interests. The shiremote was a court rather than a legislative body; its main function was to hear and determine cases which were too important to be decided in the hundredmote, especially cases relating to the ownership of land. From its decisions an appeal might be carried to the Witan, but suitors were forbidden to seek justice from the great council until they had failed to get it in the hundred and the shire.

Significance of the local democracy.

There were three significant things about this Saxon system of local government. First, it was measurably uniform throughout the whole kingdom, thus creating a bond of national unity. Second, it provided a hierarchy of local areas (townships, hundreds and shires) each with its own governmental organization. Thereby it laid the groundwork for the Anglo-Saxon system of political devolution which has come to be known as local self-government. The English people obtained in township and shire their first elementary lessons in the art of governing themselves. Finally, and perhaps most significant of all, is the fact that the governments of the hundred and the shire were based, in theory at least, upon the representative principle. It was there that the idea of choosing representatives first gained a firm foothold. Men were elected by their fellow-freemen to sit in the shiremote long before there were any elections to parliament. So, when representation in parliament came, the people were ready for it.

The Norman conquest.

The Saxon monarchy did not gain strength with the lapse of time. Its weakness provided an opportunity for the invasion of England by Danish tribes which overran a considerable part of the country and installed a line of Danish kings. After a season of disorder, bloodshed and extortion, the Saxon dynasty was restored, but only for a brief interlude. The Norman conquest was at hand. On the death of Edward the Confessor in 1066, William of Normandy laid claim to the English throne and supported his claim by bringing an army across the Channel. After defeating his rival claimant in a decisive battle at Senlac or Hastings, William proceeded to Westminster where he was crowned on Christmas Day in Edward's Abbey.

Constitutional effects of the Norman conquest:

The coming of the Normans inaugurated the second epoch in the evolution of the British constitution. But the Norman conquest, like the American Revolution of seven centuries later, is to be looked upon as a turning-point rather than as a starting-point in the development of representative institutions. The Norman conquerors did not supplant the existing government but merely altered it and superimposed some of their own institutions upon it. William desired to rule as king of the English, hence he permitted the people to retain their ancient laws, institutions and customs; he altered these only in so far as seemed necessary to ensure the strength of his own royal power. Thus there took place a fusion of Saxon and Norman political ideals, with lasting advantage to the English nation. The old Saxon constitution was strong in the local areas but weak in the country as a whole; the Norman constitution became strong in both.

1. The increased authority of the crown.

First among the significant developments of the Norman period was the increased power of the crown. The Saxon monarchy had more prestige than authority; it was weak because local independence was strong. The king, unless he were a man of assertive personality, could not control the ældormen of the shires. But William the Conqueror set out to make himself every inch a king; and he succeeded in doing it by a variety of measures. He curbed the power of the Saxon magnates; he broke up their great estates and divided them among his own trusted followers to be held under feudal tenure as his vassals. He made himself head of the church and assumed the right to appoint the bishops. Most important of all, William and his successors drew the system of local government under their control, particularly by increasing the powers of the shire reeves or sheriffs. These sheriffs, who were now appointed by the king and responsible to him alone, became the real rulers of the shires (or counties as the Normans called them). They enforced the king's will in the counties, maintained law and order, collected the taxes and turned them into the royal treasury. The sheriffs became the prefects of mediæval England. The ældorman, or earl, who had presided in the Saxon shiremote disappeared altogether from the Norman county court.[1] Finally, the crown increased its authority during the Norman and Angevin periods by developing a system of royal judges who went about from county to county hearing cases, deciding them uniformly, and making the king's law common throughout the realm. There had been no great body of common law in Saxon times.

2. The division of the great estates.

3. Royal supremacy over the church.

4. The work of the sheriffs.

5. The itinerant justices and the common law.

Significance of the growth in royal power.

The significance of all this, in English constitutional history, should not be overlooked. It may sound like a paradox, but it is none the less true that the growth of the royal power paved the way for the ultimate triumph of English democracy. Representative government did not have its first great development in England because the people were more free in that realm than elsewhere, but because the monarchy was stronger there. There were no great dukes and barons to challenge its supremacy as in France. Restraints upon the king's authority in England could not be imposed by individual magnates, for there were none strong enough. The curbing of the royal power had to be a joint enterprise, participated in by all. In other words the noblemen and landowners of England were compelled to pool their strength against the monarchy and they seized upon parliament as an agency through which this might be effected. Then, needing allies, they took the people into camp, and parliament became more broadly representative. That is what is meant when we speak of English democracy as a by-product of the royal supremacy.[1]

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[1] The title "earl" has survived as one of the hereditary ranks in the British nobility, but for many centuries has not connoted an appointive office. Nevertheless the letters-patent by which an earl is created still make use of language which betokens an office as well as a dignity.

The Witan becomes the Magnum Concilium

Under the Normans the traditions of the old Witan were continued by the Magnum Concilium or great council, a council of the barons. This body, like its predecessor, was composed of officials and other high personages; no elective members were added. At its sessions, which took place three times a year in William's reign, there were present all the high officers of the kingdom, the bishops, and the royal tenants-in-chief. "All the men of England," the chronicler puts it, by which he meant all the men that counted. The great council met in different parts of the country—at Westminster, at Winchester, or at Gloucester as the king happened to be—but eventually all its sessions were held at Westminster. This Magnum Concilium supposedly had the same general functions as the old Witan but its actual power was less because the king's authority had become greater and because all its members were now the king's vassals. It was the high court of the king and his chief advisory council. It dealt with "great men and great causes." The king consulted it in the making of laws and the levying of new taxes. But most of the royal revenue came from feudal dues, and for the collection of these the king needed nobody's approval. The Norman king was the largest private landowner and the richest man in the kingdom; his income was large enough to defray most of the national expenditures without recourse to any regular system of taxation.

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[1] This matter is discussed at length in Henry Jones Ford's *Representative Government* (New York, 1924).

A new cog in the political mechanism: The Curia Regis.

Then there was the Curia Regis. It is sometimes said that this was a different body from the Magnum Concilium, and it is sometimes said that the two were the same. They were in fact the same and yet not the same. The anagram may be explained in this way: The great council met only at intervals, three times a year at the most. But certain of its members, notably the officers of the royal household (such as the chancellor, the chamberlain, the constable, and the steward) were permanently with the king, travelling with him wherever he went. This small body of officials and barons, in permanent attendance on the king, could be used at any time as a sort of executive council or court, and to these gatherings the name Curia Regis was applied. The king's wishes, the business in hand, the convenience of the barons—various things determined whether a big council or a little council should be called. In other words there were both plenary and restricted sessions of the same body, with no hard and fast line between the two in point of membership or jurisdiction. It is not improbable that sessions of the Concilium were devoted chiefly to larger questions of justice, finance, and public policy, while meetings of the Curia were chiefly concerned with administrative and routine matters, but even of this we cannot be sure. There was a serene disregard for definiteness in mediæval institutions.

Summary.

The essential thing to be borne in mind is that the Norman and early Angevin kings governed England with the help of a single non-elective body which met either in formal session with a large membership and was known as the great council or more informally, with a smaller attendance, and was called the Curia Regis. We do not know the extent to which the king was bound to seek or accept the advice of either body. The Norman monarch judged and taxed, levied feudal dues on his vassals and commanded his feudal army, declared the customs of the kingdom and changed them by royal command. Nevertheless he did call the leaders of his people together, sought their advice, and sometimes followed it. The habit hardened into a usage and the usage became a constitutional principle. Out of the plenary sessions of the great council the British parliament arose; out of the Curia grew the privy council, the exchequer, and the high courts of justice. So England owes much to this ancient council in its dual organization.

The work of Henry II.

The Norman political system was rough at the edges. But most of the crudities were polished off by Henry II, the first of the Angevin kings. Henry restored, revivified, extended, and defined the organs of central control. A man of legal temperament, with a genius for government, he infused new life into the administrative and the judicial system. He elaborated the plan of sending royal justices on circuit to the counties; he appointed more competent sheriffs; he brought the jury system into general use, and he inaugurated a distinction between the administrative and the judicial functions of the Curia Regis. By holding more frequent sessions of the great council and by referring all important matters to it for deliberation he assured its place as the forerunner of parliament. Many other improvements were made during his reign. His Constitutions of Clarendon (1164) stand first among the written landmarks of the British constitution.

The beginnings of a separation between executive and judicial work.

Mention has been made of the fact that the Curia Regis originally concerned itself with both administrative and judicial matters, making no distinction between these two fields of jurisdiction. Then it naturally found that work could be expedited and improved by devoting separate sessions to different kinds of business—to the work of examining the accounts of the sheriffs and to the work of hearing appeals, for example. Moreover, there developed the practice of sending members of the Curia out into the counties to preside over the county court, thus bringing the judicial authority of this high tribunal closer to the people. At any rate there gradually took place a separation between the administrative and the judicial work of the Curia, and with this there came a bifurcation of its membership. One section continued as a permanent royal council, later known as the privy council. The other, confining itself to judicial business, became the parent of the exchequer and the high courts of justice—the court of the king's bench, the court of common pleas, and the court of chancery. It is not to be imagined that this separation took place in steady and regular process, or that it can be assigned to any single reign.[1] The membership of the royal council was not regularized until the middle of the thirteenth century and it kept no minutes of its proceedings until much later. The exchequer was organized at an early date but the courts took form more slowly. The whole thing affords an admirable illustration of the principle of evolution as applied to political institutions. Nowhere can a better illustration be found.

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[1] The separation began early in the twelfth century and was not completed until the middle of the fourteenth. Full details are given in J. F. Baldwin, *The King's Council in England during the Middle Ages* (Oxford, 1913), ch. iii.

The evolution of parliament.

Such, in a general way, was the evolution of the executive and judicial branches of English government during the twelfth, thirteenth, and fourteenth centuries. Meanwhile a development was taking place in the legislative arm of the government. It is well to explain, however, that no clear distinction between executive and legislative functions had been made at this early stage. The king was the source or fountain of all law, likewise the sanction of all law. Nevertheless a separation between legislative and executive work, between law and administration, was bound to develop as the great council grew larger in its membership.

The first enlargement 1213.

This enlargement of the council came with the admission of the lesser landowners, the knights of the shire as they were called. King John, in 1213, directed the sheriffs to send "four good knights" from every county to attend a session of the great council at Oxford. This and subsequent invitations of the same sort were dictated by purely practical motives. The king wanted revenue; he desired to levy taxes upon all estates of whatever size; it was deemed advisable (for it facilitated the work of the royal taxgatherers) that the taxes should be approved in council by a widely representative gathering.

By the beginning of the thirteenth century, moreover, the doctrine that "what touches all should be approved by all" was gaining a hold upon the minds of the people. It was becoming a recognized principle. But a summons to attend the great council was by no means looked upon as an honor; it was regarded by everyone, great and small landowners alike, as an imposition to be evaded if possible. The knight of the shire, when his fellow-knights elected him in response to the royal summons, had to travel to Westminster at his own expense, and travel was costly in those days. From the outlying parts of the kingdom the journey was a matter of weeks. There was neither honor nor emolument in the job. And when the knights arrived at the meeting place of the great council they were merely asked to ratify new taxes and then sent home again. It is small wonder that the meetings often had to be adjourned by reason of the meager attendance.

Magna Carta 1215.

The Charter of 1215, by some of its provisions, gave increased definiteness to the great council of the realm. It stipulated that no new and special taxes could be imposed by the king without the council's approval; it provided that all the great barons should be summoned individually and all the knights of the shire by writs addressed to the sheriffs. But Magna Carta was thoroughly baronial in tone; it did not require that membership in the great council should be made representative of all the people. It assured no representation to the towns. Although schoolboy orators perennially acclaim Magna Carta as "a great palladium of Anglo-Saxon liberty" it was in reality nothing more than a treaty between the king and the barons of England in which the latter got all they could for themselves and very little for the people as a whole. Most of its provisions relate to the privileges of the church and the landowners; only a very few have any relation to the rights of the common man.

There is a well-known picture which often hangs on the walls of American school rooms. It portrays King John, with a crown on his head and a quill pen in his hand, affixing his signature to a long scroll which is supposed to contain the provisions of the great charter. Behind him is pitched a tent of nineteenth-century design, and over this tent flies a royal standard that did not come into use until long after John had gone to his grave. All this is fantastic, for the reason (among others) that John Plantagenet could not write a single word, not even his own name. Magna Carta was not signed by the king; it was sealed with the great seal of the realm and with the individual seals of the barons. The latter were affixed in witness of the fact that the king had assented to its provisions.[1]

Yet Magna Carta is properly regarded as a landmark in English constitutional history. It definitely established the principle that the king, on certain great issues, must consult his council as a matter of law and not as a matter of choice. In other words it set forth a declaration of feudal rights as the barons understood them. It was a recital of what the barons of England looked upon as the constitutional customs of the realm which King John had tried to set at defiance.

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[1] The best book on the subject is W. S. McKechnie's *Magna Carta* (Glasgow, 1905).

Simon de Montfort's great council, 1265.

But let us get back to the evolution of parliament. The charter of 1215, as has been said, did not require that the great council should be placed upon a representative basis; the barons were not concerned in getting representation for any but themselves. But it was not long before the wider principle gained acceptance. This advance is commonly associated with the name of Simon de Montfort, a mediæval statesman who is commonly designated as the Father of the House of Commons, although he does not altogether deserve that title. What happened, in short, was this: King John, two years before he granted the great charter, summoned to the council not only the major barons but four knights from every county. His successor, Henry III, followed this precedent by summoning the knights to a session at which he asked for new taxes and was refused. Thereupon a quarrel between the king and his barons ensued; both sides resorted to arms; the king was defeated, and Simon de Montfort, as leader of the barons, became regent of the kingdom. But a regent could no more govern without funds than could a king, so Montfort had to solve the problem of finding a great council which would approve a tax levy. In 1265, therefore, he took the step of summoning not only the bishops and the great barons, together with two knights from every shire, but two representatives from each of twenty-one English boroughs or towns.

Montfort's motives.

The motives which actuated Montfort in calling for representatives from the boroughs are not altogether clear. Montfort's hold on the barons was beginning to weaken and it is not improbable that he desired to offset this weakness by playing to the townsmen who were now becoming a more important factor in the national population. In other words he did what a modern political boss would do. He could not help seeing, moreover, that the towns would afford a lucrative source of taxation if they could only be levied upon like the rest of England. Land had been bearing the brunt of taxation and the towns had been getting off too easily. Montfort may also have been influenced by the fact that the towns had long since gained representation in the county courts, thus establishing a precedent for representation in the great council. There is no reason to suppose that the Father of the House of Commons was actuated by ideals of popular government. This is shown by the fact that he did not summon representatives from all the towns but only from those which were known to be friendly to himself and his cause.

The model parliament 1295.

Montfort's great council of 1265, with its earls, barons, bishops, knights and burgesses, was not a national parliament but a party convention—and a packed convention at that. It contained none but his own friends.[1] And when Montfort was ousted from the regency a little later, the practice of summoning representatives from the towns was discontinued. Sessions of the great council (or parliament[2] as it was now being called) were held from time to time during the next thirty years—with no borough representatives present. Then, in 1295, Edward I summoned them once more. Edward's impelling motive was the financial pressure of the wars in which he was engaged. He needed money from all elements, the church, the barons, the knights, and the towns. Hence his all-inclusive convocation. His "model parliament" of 1295 was a large body, a parliament in the true sense.[3] It met as a single chamber but voted its taxes by three divisions or "estates," in other words the clergy, the barons and the knights, and the townsmen each voted separately. Each group was called into the presence of the king and his council. There they listened to his plea for money and gave their assent—perhaps by their silence. They did not sit; being in the presence of the king, they stood. The sessions did not last long, just long enough to unloose the purse strings.

The "three estates" in parliament.

In several subsequent parliaments the "three estates" met and voted separately, but this three-chamber arrangement never became hardened into a fixed parliamentary practice. Instead there took place a coalescence which eventually made parliament a bicameral body. The higher clergy and the great barons drew together, for they had interests in common. Both were large landowners; both were summoned to parliament by individual writs and hence were members of it by tenure, not by election.[1] On the other hand, a similar identity of interest drew together the knights of the shire and the burgesses, for both were present in a representative capacity.

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[1] There were very few barons present, for most of them were now hostile to Simon, and only the twenty-one handpicked towns were asked to send representatives. The ecclesiastical magnates, however, were there in full force, for Montfort was a friend of the church.

[2] The term "parliament" was vaguely and loosely used until 1295 or even later. Matthew of Paris speaks of a *magnum parliamentum* in 1257 (Stubbs, *Select Charters* (Oxford, 1900), pp. 330-331, and the Annals of Winchester refer to a *parliamentum omnium magnatum* in 1270 (*Ibid*, p. 337). The Rolls of Parliament begin with the year 1278, but they do not cover all the meetings until the end of the century.

[3] It included two archbishops, eighteen bishops, sixty-six abbots, five heads of religious orders, nine earls, forty-one barons, two knights from each of the sixty-seven shires, and two representatives from each of one hundred and ten boroughs—over four hundred in all.

Separation of two Houses.

The moulding of parliament into the two chambers, which came to be known as the House of Lords and the House of Commons, was accomplished in this way. The process was accomplished slowly and was not completed for at least a hundred years. It was an important step, one of the most significant in the entire history of government, for it started the bicameral system on its way around the world. No one planned or guided the separation and coalescence; it was merely the natural working out of the social forces of the age. Regarded as of little or no consequence in the earlier centuries, this division of the English parliament into two chambers gave it a frame that has been transmitted to almost every other great legislative body on earth.[2]

The methods by which knights and burgesses were elected.

It has been said that the knights and the burgesses were present as representatives; but how and by whom were they elected? The knights of the shire were chosen in the county court, which was in effect a county council. Any landowner, whether he had attained the rank of knighthood or not, was eligible. The burgesses or representatives from the boroughs were chosen by the freemen of these towns at meetings called for the purpose. It should not be imagined, however, that election was sought and campaigned for as in modern times. Both knights and townsmen evaded it, for members of parliament received no salary. Only the well-to-do could accept election. So the elections were determined by a relatively few landowners in each shire and by the leading citizens of each parliamentary borough.

Being a member of the House of Commons in mediæval England brought an individual neither profit nor honor nor authority. The commoners were regarded as mere supernumeraries. In the great hall at Westminster, where parliament assembled, the bishops and barons sat in front of a throne which the king occupied, his council flanking him on both sides. Below the bar of the hall, at the opposite end from the throne, stood the knights of the shire and the burgesses. Their presence was not essential to a quorum. The king, through his chancellor, presented the immediate business in hand, whereupon the commoners retired to the refectory of the building and argued among themselves as to what had best be done about it. Having chosen a spokesman or speaker they trooped back into the hall and heard him announce the result of their deliberations. An opportunity was also given them to present petitions, not as a body but as individuals. That was the extent of their share in the work of parliament.

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[1] Most of the lesser clergy, the abbots and priors, ceased to be summoned to parliament after 1295 and were granted their own convocation or assembly in which they met and granted subsidies when needed.

[2] We are accustomed to think of the two-chamber system as having been universal from the outset. But the Scottish parliamentary system developed a single chamber; the French developed three estates; and in Sweden the early parliaments had four houses.

The powers of parliament in its earlier days.

We must not make the error of thinking that parliament in the fourteenth century was a lawmaking body. The king made the laws with the assent of the lords, spiritual and temporal. The commoners merely presented petitions and assented to the levy of taxes. The bishops and barons far outweighed them in influence.[1] But the commoners soon began to gain authority. They acquired, in due course, the right to be *first* considered in money matters. Their possession of this financial initiative was shown in 1407 when the king agreed that all grants of taxes should be first made by the commoners and then assented to by the lords.

The right of presenting petitions likewise became the basis of an actual share in the making of laws. For it naturally happened that many individual petitions related to the same grievance. In such cases it became the custom to merge them into a common petition, a collective petition presented by the house as a whole. Such a petition came to be known as an "address to the throne," that is, a united request for royal action. In the fourteenth century the king made the laws *with the assent* of the lords, *at the request* of the commons; in the fifteenth century he found himself making them "by and with the advice" of both. It was in this way, slowly and almost imperceptibly, that the commoners acquired an actual share in the making of the laws. During the Wars of the Roses, which covered a considerable portion of the fifteenth century, the commoners gained on the lords because the latter devoted so much of their attention to quarrelling among themselves. These wars were chiefly waged by noblemen and their retainers; the towns took little part in the struggle. Before they were over the majority of the barons had been killed off and their titles extinguished.[1] New noblemen were created, of course, but they did not have the prestige of the older families.

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[1] The term House of Lords did not come into use until after 1500.

England's government at the beginning of the modern epoch.

Still, the House of Commons was the weaker of the two chambers even in the days of Henry VIII and Elizabeth. The crown remained the pivotal point in the government and looked mainly to the House of Lords for advice in lawmaking. When the commoners showed themselves obstinate the monarch did not disdain to use threats and coercion. Henry VIII, for example, warned them on one occasion that unless certain measures were passed, he would send a batch of commoners to the gallows. Elizabeth sent two members of the Commons to prison for their persistence in advocating legislative proposals which were distasteful to her. The House contained at this time about three hundred members elected by the freeholders in the counties and the freemen of the town.[2] Elections were held irregularly, for there was no requirement by law or custom that they should be held on stated dates. When the king wanted money he ordered an election. Then, if the House of Commons proved amenable, he continued it in existence for several years; otherwise he dismissed it speedily. Sessions in any event were brief—usually lasting only a few days or at most a few weeks. In the reign of Henry VIII nine parliaments were elected. One sat for seven years; two sat for three years each; the other six were quickly dissolved. Queen Elizabeth summoned parliament more regularly and (outwardly at least) accepted its action on many important matters.[3] The great statutes of her reign indicated the growing strength of the national legislature.

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[1] The first Tudor parliament contained only 20 members of the peerage.

[2] A freeholder was one who owned land with an estimated rental-value of forty shillings per annum or more. A freeman was anyone who possessed the "freedom of the town." Originally a considerable percentage of the adult male residents were freemen but as time went on the category was narrowed.

[3] Elizabeth was very adept at conceding the shadow while withholding the substance. In 1593 she answered a series of requests from the House of Commons in this fashion:

"To your three demands the Queen answereth: . . . . Privilege of speech is granted, but you must know what privilege you have; not to speak every

The crown and parliament under the Stuarts.

Soon after the death of Elizabeth, however, this waxing strength of parliamentary government was put to a severe test. Leaving no nearer relatives, Elizabeth passed the English throne to her cousin, James VI of Scotland, who in 1603 was crowned king of England as James I. James Stuart claimed to rule by divine right and laid great stress upon his royal prerogatives. This insistence, of course, soon precipitated a conflict with the House of Commons, the immediate issue being the right of the crown to lay certain taxes without the consent of parliament,[1] and to administer justice without regard for the forms of law. During the reign of James (1603-1625) the breach widened but matters did not come to an open rupture, for the king was careful not to press his doctrines too far. When he could not get laws, he resorted to ordinances.[2] His son and successor, Charles I, was neither so cautious nor so fortunate. Surrounding himself with rash, self confident, and unwise counsellors, he soon brought his relations with parliament to the critical state. In 1628 both Houses united in presenting to Charles the famous Petition of Right which definitely asserted the principle that no man should be compelled to make or yield any gift, loan, benevolence, or tax without the consent of parliament. The king, under pressure, assented to the Petition, but he did not long observe its provisions. New impositions were laid and forced loans exacted without parliamentary authority. When parliament reiterated a protest the king dissolved it and for eleven years ruled the country without calling a parliament at all. England was on the verge of despotism and only managed to escape it by launching the Great Rebellion. On the eve of hostilities the king hastily summoned a parliament but it proved no more amenable than its predecessors. It passed the Triennial Act providing

The open breach.

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one what he listeth, or what cometh into his brain to utter that; but your privilege is *aye* or *no* . . . To your persons all privilege is granted, with this caveat, that under color of this privilege no man's ill-doings or not performing of duties be covered and protected. The last; free access is granted to Her Majesty's person, so that it be upon urgent and weighty causes, and at times convenient, and when Her Majesty may be at leisure from other important causes of the realm."

[1] The crown did not question parliament's right to control ordinary taxes but held that certain special levies called impositions (additional customs duties) were within the royal prerogative.

[2] In the King James version of the English Bible (*Exodus*, xviii, 20) the translators wrote "And thou shalt teach them ordinances and laws." They placed ordinances first. Laws were enacted by the king and parliament together; ordinances were issued by the king alone.

that parliament should thereafter be called at least once in every three years and adopted a Grand Remonstrance which was in effect an appeal to the nation, a statement of the Commons' case against the crown.

The Great Rebellion and the Commonwealth.

In the early stages of the rebellion the king's forces had the advantage but eventually Cromwell succeeded in reorganizing the parliamentary army and gaining the upper hand. The king fled to Scotland whence he was delivered into the hands of parliament. After prolonged negotiations he was put on trial, condemned, and executed (1649). Thereupon great governmental changes came in quick succession, the monarchy and the House of Lords were abolished;[1] a commonwealth was proclaimed; a written constitution known as the Instrument of Government was adopted, and Oliver Cromwell was named Lord Protector of the British Commonwealth. But Cromwell, like Charles, found the House of Commons a difficult body to deal with and the Instrument of Government failed to take root.[2] It became increasingly unpopular with the people and was only maintained in operation by the personal genius of Cromwell. The Lord Protector died in 1658, having named his son, Richard, to be his successor; but Richard speedily abdicated and in 1660 the monarchy was restored.

The Stuart restoration (1660) and the abdication of James II (1688).

The restoration of the Stuart dynasty indicated the strength which the monarchical tradition had acquired in Britain. The old grievances were for the moment forgotten. It was assumed that Charles II, the new king, would adopt the principle of parliamentary supremacy, and in form he did so. During the twenty-five years of his reign he had several conflicts with parliament but never risked his throne on any issue. Charles was guided during the earlier years of his reign by a cautious statesman, the Earl of Clarendon, who steered him out of serious trouble. His brother, James II, who succeeded to the throne in 1685, was not so fortunate. He was a perverse fellow, and unfortunate in the choice of his advisers. Within a short time after his accession he quarrelled with parliament over the right to exercise his "dispensing power" as it was called, that is, the right to suspend the operation of the laws. This drove the parliamentary leaders to the plan of bringing in a new monarch. William, Prince of Orange, was therefore invited to aid in "protecting the constitutional liberties of the realm" and the result was the Revolution of 1688. Finding himself deserted by all parties, James fled to France and the Stuart monarchy came to an end.

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[1] In 1656 it was provided, however, that there should be a second chamber or "other House," the members of which were to be nominated by the Lord Protector.

[2] In 1656, when the House endeavored to assert its right to control the militia, Cromwell appeared on the floor, gave the members a scathing rebuke, dissolved the House, and sent them home. And when a new parliament was elected he saw to it that no members opposed to him were admitted to the House. Subsequently, however, they were permitted to take their seats and trouble again resulted, with the same outcome—another dissolution.

Development of the privy council.

During this struggle between the crown and parliament there took place a strengthening of the king's council, now officially known as the privy council. It became a large body, including at one stage as many as forty members. Its functions were still called advisory, but they were in reality much more than that. It virtually exercised some of the king's prerogatives for him. Through its committees or boards, and by means of orders-in-council, it regulated trade, supervised the administration of justice, took control of finance and left no department of the government outside its ceaseless supervision. Its right to issue orders or ordinances with the force of law made it in some ways a legislative body more influential than parliament itself.

The cabal of 1667.

It was the theory of the government that the king should be guided by the advice of his privy council. But when this body had become large and did most of its work through committees it could no longer perform this advisory function to the king's taste. In the public mind its unwieldiness and inefficiency were held responsible for some English naval reverses at this time. So Charles II adopted the plan of forming a "cabal"[1] or inner circle of privy councillors to advise him on all important and confidential matters. This action was much resented by the other councillors, and the practice was temporarily abandoned, but it was soon resumed and became the basis of the cabinet system.

The Bill of Rights (1689).

As a result of the Revolution, William and Mary became joint monarchs of Great Britain in 1689. In order that there might be no recurrence of friction between the crown and parliament the latter drew up and adopted a document known as the Bill of

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[1] The word was formed by using the initial letters from the names of its first members—Clifford, Ashley, Buckingham, Arlington and Lauderdale.

Rights. While this document did not profess to be a constitution in the ordinary sense of the term it set forth the basic principles of English government as they were understood by parliament at the time. Enumerating the various issues which had arisen between the king and his people it denied the claims of the one and asserted the rights of the other. It proclaimed the legislative supremacy of parliament, denied the authority of the crown to levy any tax or impost without parliamentary consent, demanded that parliament should be regularly called, and set forth a list of individual liberties which were not to be infringed. The Bill of Rights, accordingly, marks the culminating stage in the evolution of the fundamentals.[1] By 1689 the outlines of the British constitution had been practically completed; nothing remained but to fill in the details and to elaborate the machinery of administration. Britain had become, beyond all question, a limited monarchy. Parliament had made itself master of the royal prerogatives. It was in a position to control the ministers of the crown even though the principle of ministerial responsibility had not as yet become established in its present form. The changes that have taken place in the British government since 1689 have altered its spirit, not its general outlines.

Constitutional changes since 1689:

But although there has been no reconstruction of the general outline, some noteworthy changes have taken place in the practical workings of English government. The most significant among these changes are (a) the continued diminution of the monarch's actual powers, (b) the rise of the cabinet and the fixing of its responsibility to parliament, (c) the democratization of the House of Commons, (d) the reduction in the powers of the House of Lords, and (e) the growth of the party system.

1. The diminished powers of the monarch.

Although the Bill of Rights asserted the legislative supremacy of parliament it did not deny to the crown an essential share in legislation. The first monarchs under the new order made themselves real factors in the conduct of the government, choosing their advisers without necessarily deferring to the will of parliament. But their successors, George I and George II, were Hanoverians by birth and interests, with little or no interest in England's internal affairs. They could not speak the English language, hence it was useless for them to attend ministerial councils. They neither understood their prerogatives nor cared to assert them. If England would only further the ambitions of their beloved Hanover in continental politics they were willing to let parliament have its way in matters of home policy. George III, when he came to the throne, made a brave attempt to revive some of the prerogatives which his father and grandfather had relinquished, but he met with no great success and by the end of his reign the question was settled.

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[1] The Act of Settlement, twelve years later, should also be mentioned. Besides fixing the succession to the throne it assured the independence of the judiciary.

2. The evolution of the cabinet.

With the decline in the personal authority of the king came a rise in the power of his ministers. It is often said that the cabal of Charles II's reign was the progenitor of the present-day cabinet, and in a sense it was; but the real cause of the cabinet's rise to power was the necessity of providing a channel through which the newly-asserted supremacy of parliament over the king could be exercised. When the monarch tried the plan of choosing his advisers without deference to the will of the House of Commons, he found that this plan did not function smoothly. It was soon discovered that things went along with much less friction when the royal advisers or the cabinet were exclusively chosen from among those members of the privy council who belonged to the dominant faction in the House of Commons. No statute or resolution of parliament forced the king to do this; his action merely followed the line of least resistance. It was easy to make trouble by selecting a prime minister who could not control parliament; it was easy to avoid trouble by selecting a prime minister who could. Sir Robert Walpole was the first royal adviser to whom the term prime minister can properly be applied. He held office at the will of parliament. When he resigned in 1742 because of an adverse vote in the House of Commons he established a precedent which is perhaps the most important of all provisions in the unwritten constitution of his country.

3. The democratization of the Commons.

The democratization of English government is a third feature of the past two centuries. The House of Commons two hundred years ago was ostensibly a representative body but not only was it unrepresentative in reality but it was steadily becoming more so. At the beginning of the nineteenth century it could not be truly said that the House represented the people of England or reflected public opinion upon matters of national policy. This situation, as will be indicated later, was due to the gradual narrowing of the parliamentary suffrage and to the fact that although the population had shifted greatly there had been no general redistricting of the country for election purposes. The Reform Act of 1832 changed all this. It liberalized the suffrage and in some degree adjusted representation to population. It made the House of Commons a representative body in fact as in name, thereby enhancing its strength and prestige. Other Reform Acts have followed at intervals, the last of them in 1918.

4. The reduction in the powers of the Lords.

The House of Lords has suffered a marked decline in its actual authority during this same epoch. And necessarily so, for when the Commons gained control of the cabinet it gained control of the crown. From time to time, especially during the closing decades of the nineteenth century, the Lords and Commons came into collision and the former were able to prevent the enactment of measures which the Commons had passed by large majorities. These conflicts engendered much political bitterness and gave impetus to a movement for curbing the authority of the upper chamber. But not until 1911 did this movement come to a head. The immediate occasion was the action of the Lords in rejecting a finance bill which the Commons was determined to place on the statute book. The Commons then decided that never again should the hereditary chamber be in a position to balk its will, and to that end the Parliament Act was put through both Houses, the Lords assenting to it under a threat that if they did not do so the upper House would be swamped by a wholesale creation of new peers. The Parliament Act definitely settled the supremacy of the Commons in all cases of disagreement.

5. Rise of the party system.

The actual workings of the British government have been greatly influenced, during the past two centuries, by the rise of political parties. We have now grown so accustomed to party organizations, party programs, and party activities that it is difficult to visualize a system of representative government without them. There were political "factions" in English history long before 1689—Lancastrians and Yorkists, Cavaliers and Roundheads, Petitioners and Abhorrers; but they were not political parties in the modern sense. None of them ever conceded that its opponents had any right to exist. When one faction gained control of the government its patriotic duty was to harry the other faction out of the land. It was not until after 1689 that Englishmen reconciled themselves to the idea that men could be opposed to the existing government without being enemies of the state. Little by little it dawned upon them that men could be "in opposition" without being rebels. Indeed, it slowly came to be realized that a strong opposition in parliament was a wholesome spur to efficient administration because it put the ministry on its mettle. So the nineteenth century witnessed the general acceptance of the party system with all its implications. The minority in parliament were no longer known as the king's enemies but as "His Majesty's loyal opposition." The insertion of the term *loyal* in this phrase is of great significance. As President Lowell has remarked it indicates one of the most important changes in the spirit of English parliamentary institutions during the past two hundred years.

Other constitutional developments during the past two centuries.

These are not the only changes of significance that have been wrought by evolution in the practice of British government since the accession of Queen Anne. England and Scotland entered into a parliamentary union in 1707. Ireland also was drawn into this union in 1800, but in 1922 this association was dissolved and a new status for Southern Ireland created. Meanwhile great overseas dominions were developed and lost by the American Revolution. Once more, in the century following this secession, a new empire was built up, consisting of many dominions, colonies and protectorates. The relations of these various territories with the mother country have been gradually determined, partly by law and partly by usage. The relations between Britain and India have also been altered and recast, especially during recent years. All this, and a great deal more, has been accomplished without any radical reconstruction of the government at home. The contour of the British constitution has undergone no fundamental change by reason of this transformation from a small kingdom of about twenty million people into a world empire of nearly four hundred millions. But in the actual workings of the government the expansion has been very great, so great indeed and so steady as to afford a remarkable example of constitutional elasticity.

There is no end of material on the subject of the foregoing chapter. For the American student the most useful brief survey is the *Outline Sketch of English Constitutional History* by George Burton Adams, (New Haven, 1918). A. B. White, *The Making of the English Consti-*

tution (New York, 1908), covers the period to 1485. A still more comprehensive work is Hannis Taylor, *Origin and Growth of the English Constitution,* (2 vols., Boston, 1898).

Those who wish to delve more deeply into the subject will find satisfaction in Charles Oman, *England before the Norman Conquest* (London, 1910); H. W. C. Davis, *England under the Normans and Angevins* (Oxford, 1905); William Stubbs, *Constiutional History of England* (6th edition, 3 vols., Oxford, 1903); Sir Frederick Pollock and F. W. Maitland, *History of English Law* (2 vols., Cambridge, 1898); A. F. Pollard, *History of England from the Accession of Edward VI to the Death of Elizabeth* (London, 1910); Spencer Walpole, *History of England* (6 vols., New York, 1902-1905); and Sir Thomas Erskine May and Sir Thomas Holland, *Constitutional History of England* (new edition, 3 vols., London, 1912). The best single volume on the development of parliament is A. F. Pollard, *The Evolution of Parliament* (London, 1920), but a longer and older work, G. B. Smith, *History of the English Parliament* (2 vols., London, 1892) is still useful.

On the development of the privy council and the cabinet further discussions may be conveniently found in A. V. Dicey, *The Privy Council* (Oxford, 1887); R. H. Gretton, *The King's Government* (London, 1913), and Mary T. Blauvelt, *The Development of Cabinet Government in England* (New York, 1902). Mention should also be made of John A. Fairlie's monograph on *British War Administration* (New York, 1919); Sir J. A. R. Marriott's *English Constitution in Transition, 1910-1924* (Oxford, 1924), and E. M. Sait and D. P. Barrows' *British Politics in Transition* (Yonkers, N. Y., 1925).

The more important documents in English constitutional history may be found in William Stubbs, *Select Charters and other Illustrations of English Constitutional History* (9th edition, Oxford, 1913), which covers the period to about 1300; G. W. Prothero's *Select Statutes and other Constitutional Documents* (4th edition, Oxford 1913) (covering the reigns of Elizabeth and James I) and S. R. Gardiner's *Constitutional Documents of the Puritan Revolution,* which deals with the period 1625-1660. A volume of *Select Documents* by G. B. Adams and H. M. Stephens (New York, 1918), covers in a more general way the entire period.

CHAPTER III

THE CROWN

Lex facit regem: what power the king hath, he hath it by law; the bounds and limits of it are known.—*Richard Hooker* (1594).

The king and the crown.

Mr. Gladstone once remarked that there is no distinction more vital to the practice of the British constitution than that which exists between the king and the crown, between the monarch as an individual and monarchy as an institution.[1] It is a distinction which is often neglected by Englishmen themselves, for the laws of the British constitution pay no regard to it. So, in everyday speech the English people attribute to their king as an individual many prerogatives which belong to the office that he holds. These prerogatives belong to an institution known as "the crown," an institution which might just as well be called The Chief Executive, or The Nation, or The Will of the People.[2]

The transfer of power from the one to the other.

The whole development of the British constitution, in fact, has been marked by a steady transfer of powers and prerogatives from the monarch as a person to the crown as an institution. Parliament has left the personal status of the king untouched; the king has always been and still is above the laws of the land; but parliament has enchained the institution which the monarch embodies and bound it to definite forms and modes of procedure. By this process the official acts of the king have been brought within the supremacy of the laws and customs of the realm. This gradual establishment of parliamentary control over the prerogatives of the crown covered a long period; it began with Magna Carta or earlier, but was not fully completed until well into the nineteenth century. The issue, indeed, was much in doubt prior to the expulsion of the Stuart dynasty, but at that point the crisis passed. The revolution of 1688 involved more than the substitution of one king for another. It marked a very important stage in the transfer of political functions from the king to the crown.

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[1] *Gleanings from Past Years* (7 vols., London, 1879). Vol. I, p. 234.
[2] Sir Sidney Low, *The Governance of England* (New York, 1917), p. 256.

The immortality of the crown.

The distinction between the king and the crown is reflected in the saying that the king never dies. "The king is dead; long live the king!" What this announcement of a royal demise really means is: "The king is dead; long live the office which one monarch has vacated and another has assumed." The death of one monarch and the accession of another make no more difference in the powers and duties of the crown than takes place when one president of a republic replaces another. The crown never dies. The powers, functions, and prerogatives of the crown are never suspended even for a single moment. They belong to a post, not to a person.

Importance of the distinction between the king and the crown.

Now if this distinction be kept in mind it will serve to clarify much that has been puzzling to foreign students of British political institutions. One reads in the text books that the crown has extensive powers, that it is the fountain of justice and the chief executive of the realm, that it appoints all civil officers, commands the army and navy, makes treaties, pardons criminals, summons and dissolves parliament and does all manner of great things—all of which is quite true, inasmuch as the crown is the agency through which all these things are done. But one also reads that the king has long ceased to be a directing factor in government, that he can perform virtually no official act on his own authority, that he is merely a symbol of the nation's unity—all of which is likewise true. These statements appear to be widely at variance, but they are easy to reconcile when it is pointed out that the powers of the crown are not exercised by the king on his own initiative but merely as the agent of others. The king and the crown are not synonymous terms although nearly everybody persists in using them as such.

Legal rights and actual powers.

Fifty years ago a brilliant essayist on English government, Walter Bagehot, contributed a good deal to the mystification of foreign students on this point when he asserted that "without consulting parliament" Queen Victoria could disband the British army, sell off the navy, begin a war, give away British territory, make every British subject a peer, dismiss the officers of government, pardon every criminal in the realm, and so on.[1] Technically, Bagehot was correct. The queen had a *legal* right to do all of these things, whether her ministers advised her to do them or not. But as a matter of fact she could not have done a single one of them without abdicating the next morning. So the actuality is that the British monarch can only do things on the advice of the ministers, and these ministers must have the confidence of the House of Commons which represents the will of the people. There is quite a difference, accordingly, between the legal rights of the crown and the actual powers of the monarch. In other words the will of the nation is supreme in England as in every other country which maintains a democratic system of government. Whether this national will is made effective through an institution known as the crown or through one known by some other name does not make a vast amount of difference. The essential thing is that all official action is controlled by the will of the people.

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[1] *The English Constitution.* Introduction to the second edition (London, 1872), p. xxxviii.

The succession to the crown.

The British crown is an hereditary institution which parliament regulates by rules of succession.[1] The existing rules of succession were established by it in 1701. Briefly they provide that the crown shall descend in perpetuity through the heirs of the Princess Sophia of Hanover, who was a granddaughter of King James I. Hence the present royal family was commonly designated until 1917, as the House of Saxe-Coburg. Then, in the flood tide of anti-Teutonic feeling, it was changed to the House of Windsor. Stipulation is made in the rules of succession that only Protestants are eligible. Until 1910 each monarch, at his or her coronation, was required to take an oath abjuring the doctrines of the Roman Catholic church; but this has now been replaced by a declaration that the monarch is "a faithful Protestant," all reference to any other religious affiliation being omitted.

Usages relating to the succession.

By usage the crown descends according to the principle of primogeniture, that is to say, elder sons are preferred to younger. Female heirs do not succeed to the throne unless male heirs are lacking.[2] In default of all heirs, male or female, parliament would provide for a new dynasty by amending the rules of succession. The eldest surviving son of a reigning monarch bears the title Prince of Wales, but this does not imply any governmental connection with Wales, nor does it endow him with any authority over that portion of the United Kingdom.

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[1] The title borne by the British monarch at the present time is as follows: George, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British dominions beyond the seas, King; Emperor of India, Defender of the Faith.

[2] There is, of course, an important legal distinction between a *queen regnant*, that is, a woman succeeding to the crown in her own right, and a *queen consort*, that is, the wife of a king. The former exercises all the pre-

Regencies.

There is no interregnum in the tenure of the crown. As the last breath passes from the body of one monarch, his heir-apparent begins to reign. The accession of a new king is customarily followed by a formal ceremony known as the coronation; but this act of coronation has no legal significance.[1] It adds nothing to the authority vested in the crown. If the succession passes to a prince or princess who is under eighteen years of age a regency must be established by action of parliament, but there are no fixed rules relating to the choice of a regent. Each case is dealt with as it arises. Ordinarily some adult relative of the young king or queen would be named. The same course would be taken in the case a ruling monarch became physically or mentally incapacitated. There has been no occasion for the establishment of a regency in Britain during the past hundred years.

The special commission.

In connection with the matter of establishing a regency, however, an interesting constitutional problem arises. To establish a regency requires an act of parliament, and an act of parliament requires the royal signature or sign manual. But if the king is incapable of performing the functions of the crown, how is this approval of the act to be obtained? This problem arose many years ago and was solved in a way which created a satisfactory precedent for the future.[2] Parliament merely authorized the appointment of a special commis-

rogatives of the crown; the latter exercises none of them. The husband of a queen does not bear the title king. Queen Victoria's husband took the title Prince Consort.

[1] The chair or throne used at the coronation of every British monarch since the time of Edward I (1272-1307) is a homely affair with a large stone encased beneath the seat. The tradition is, and many Englishmen believe it, that this is the identical stone on which the patriarch Jacob pillowed his head at Bethel. According to the legend the stone was carried into Egypt by the sons of Jacob, taken thence to Spain and later to Ireland where it was placed upon Tara Hill. Finally it was brought across to Scotland and deposited in the Abbey of Scone whence Edward I took it to England in 1297. Geologists who have examined the stone assert, however, that it is a piece of Scottish sandstone and could not have come out of any geological formation found in Palestine.

[2] In 1810 when George III became permanently incapacitated by mental illness.

sion to append the royal sign manual to the regency act. The commission did this and then dissolved.

The financial support of the crown.

The earlier practice.

In the early stages of the English monarchy it was the understanding that "the king should live of his own"—in other words that the kingship should pay its own way. The Norman and Plantagenet kings were feudal landowners and derived large revenues from their own estates. Out of this income they were expected to defray all their personal expenses, including the maintenance of the royal courts. They were even expected to provide for the ordinary expenses of the nation. Everything in the way of a national levy was frowned upon in early days unless there was some special occasion for it, such as a war; and even then there was a good deal of murmuring. But as the national expenditures grew larger it became the custom to call upon parliament for special grants. The mediæval kings of England also had the right of "purveyance," that is, the right to take food or other supplies from their subjects at an appraised valuation, which was probably well below the real value. When a Plantagenet king and his retinue went about the country they requisitioned like an invading army, and every rustic trembled for his granary until the cavalcade had passed by. By one method or another, at any rate, the monarch managed to provide most of the expenditures from his feudal aids and other sources, supplemented by parliamentary grants which gradually became larger and more frequent.

Its abolition.

In time, however, the king's personal revenues became inadequate. The feudal dues were felt to be burdensome, moreover, because of the irregularity in levying them, for they did not become payable at stated intervals but on various special occasions which might come almost any time—when the king's eldest son became of age, or when his eldest daughter married. And the right of purveyance also became intolerable as the country developed. Accordingly parliament induced the king to relinquish his feudal aids and to give up the practice of purveyance in return for an annual money grant. Most of the royal estates were eventually leased or sold and the monarchy became dependent on parliament for the maintenance of its dignity.

The Civil List.

Until 1689, however, no distinction was made between funds granted for the monarch's personal use and those appropriated for public purposes. Then began the practice of making such a separation which gradually became clear and complete. So parliament now fixes, at the accession of each new king, an annual sum to be paid from the national treasury for the support of the ruling monarch and the various members of the royal family.[1] This grant is known as the Civil List; it is made partly for specific purposes and partly in a lump sum which the monarch can spend as he pleases. At present it amounts to more than two million dollars per annum.

Powers of the crown—their origin.

Originally the powers of the crown were deemed to be "prerogatives" which inhered in the person of the monarch. They had not been conferred upon him by action of parliament or of any other body. Some of the crown's authority at the present day represents a survival of this prerogative, but most of it has been accumulated by usage or conferred by positive action of parliament. Parliament has not only bestowed authority on the crown from time to time but has also diminished, and even abolished, some of the ancient royal prerogatives. A few other prerogatives of the crown have been lost by long disuse. Some writers on the British constitution draw a distinction between the *prerogatives* of the crown and the *powers* of the crown as they exist at the present time, but the difference is of no practical importance because there is no phase of the crown's authority, howsoever derived, which parliament cannot control if it chooses. So whether a certain function of the crown harks back to the days of royal absolutism, or has evolved in the process of constitutional development, is a matter of purely antiquarian interest. The all-important fact is that the crown, in all that it does, serves as the executive agent of the British people and is under the control of parliament.

More than a hundred and fifty years ago, when Montesquieu enunciated his doctrine of division of powers, he conceived him-

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[1] This does not mean, however, that the monarch has no personal income. On the contrary the British king, as an individual, has a very large income apart from the annual sum paid to him by parliament—how large is known only to himself, for he is under no obligation to disclose it to anybody. As Duke of Lancaster, moreover, the king still enjoys the revenues of that ancient duchy. These revenues have never been surrendered to parliament and are in addition to the allowances granted in the Civil List. The Prince of Wales, as eldest son of the monarch, is Duke of Cornwall, and receives for his own use the revenues of the Duchy of Cornwall. These revenues are now so large that the Civil List contains no separate provision for the Prince of Wales.

The principle of "separation of powers" is not recognized in the British constitution.

self to be setting forth a principle which was exemplified in the government of Great Britain. The extinction of free government in France he believed to be a logical outcome of the fact that all governmental authority—legislative, executive and judicial—was concentrated in the same hand. The Bourbon kings of France promulgated decrees with the force of law, carried these decrees into operation, and assumed the right to condemn offenders. This fusion of powers seemed fatal to the growth of free institutions, hence Montesquieu admired the success of Britain in keeping them separate. But he was wrong. He was misled by superficial appearances. The making of the laws seemed to be vested in parliament alone, while the execution of the laws appeared to be an independent function of the crown, thus establishing a clean-cut separation. The truth is that both the making and the execution of the laws were under the control of parliament even in Montesquieu's time. The authority of the crown in England is a delegated authority—delegated by parliament to a body of agents known as ministers, whose decisions are announced in the name of the crown. The principle of separation of powers has never had formal recognition save in one respect, namely, in the exceptional tenure which is given to the judges, who can only be removed on an address presented to the crown by both Houses of Parliament. The idea that the executive and legislative branches of the government should be a counterpoise to one another is a doctrine that has never appealed to the political sagacity of Englishmen.

Excep

The crown is a part of parliament.

The British crown is not only the chief executive but an integral part of the national legislature. It is one of the "estates of the realm." Its action is essential to the making of laws. The crown is likewise the fountain of justice and the dispenser of all pardons. Thus it forms a part of the executive, legislative, and judicial mechanism. No considerations of political philosophy debar it from exercising these three classes of authority in accordance with the forms of law and usage.

All this is seen in the symbolism which colors the nomenclature of British administration. Arrests are made in His Majesty's name.[1] Criminal cases are listed in the courts as Rex

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[1] On the outside of all official envelopes, which pass through the mails free, are the letters, "O. H. M. S.," the abbreviation for "On His Majesty's Service."

This is illustrated by the nomenclature of government.

versus So-and-So. In his public utterances the king speaks of "my government," "my ambassadors," and "my people." Britishers call themselves subjects of the king—not citizens of the British empire. These expressions, however, are merely the survivals of ancient usage; they do not point to the exercise of any personal authority on His Majesty's part. The substance of power has departed, leaving only the symbols behind. This has often happened in the history of government. Yet even a bare symbolism is not without value. In the public imagination it has a unifying, dignifying, and stabilizing influence. Englishmen agree that it undoubtedly exerts a psychological influence in mitigating the bitterness of partisan feeling. For after all it is His Majesty's government that is ruling the country, and not a Conservative government, or a Liberal government, or a Labor government. And it is equally His Majesty's opposition that sits on the other side of the House. Phrases and symbols have a more subtle and far-reaching influence than we sometimes suspect.

The crown's part in legislation.

Down to the close of Charles I's unhappy reign, it was contended by the monarchists that the king had inherent legislative power, that he possessed the prerogative of issuing decrees without the concurrence of parliament. These enactments were known as ordinances. But the right to issue ordinances has long since been lost. Orders-in-council are still issued by the crown, but such orders do not, for the most part, have any legal force unless authorized by some act of parliament. To this rule, however, there are some important exceptions.

So it is with the enactment of statutes. Technically they are the work of the king in parliament. This is indicated by the wording of the preamble which is affixed to every act of parliament, to wit, that the statute is enacted "by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same."[1] No act of parliament goes into force without the assent of the crown. But this assent is never denied; it is always given as a matter of course.

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[1] When a statute is enacted by the House of Commons alone, under authority of the Parliament Act of 1911, the reference to the advice and consent of the "Lords Spiritual and Temporal" is omitted.

Functions in relation to parliament:

1. The crown summons, prorogues and dissolves parliament.

The crown takes the initiative in summoning parliament, subject to the requirement that it must be summoned at least once a year. There is no law which requires parliament to be summoned once a year, but if it were not so summoned certain annual acts would expire and leave the nation without army regulations, without revenue from the income tax, and otherwise in a predicament. For the laws relating to the army and to certain revenues are passed by parliament for a single year only. The crown also prorogues and dissolves parliament. When a new parliament meets it is greeted by the monarch in a speech from the throne. But the king as an individual has no discretion in the performance of these functions. The ministers determine when parliament shall be called together, ~~when it shall be prorogued~~, and when dissolved. Even the speech from the throne is written by the prime minister and put into the monarch's hands to be read. It expresses the views and opinions of the cabinet, not those of the king. Having delivered his speech from the throne the king withdraws, and does not again appear in parliament until the time comes to prorogue or dissolve it.[1] In the formative stages of parliamentary development the kings of England actually attended the sessions and declared the laws, but for more than two hundred years no monarch has attended a meeting of parliament, even as a spectator, except on the opening and closing days.

2. The assent to laws.

When measures have been passed by parliament they are laid before the king for his assent. This assent may be given by him in person or he may issue a commission authorizing certain commissioners, members of the House of Lords, to "declare and notify his royal assent" for him. Nowadays he pursues the latter course. The assent is not given by signing the measures as is done by the President of the United States. The practice is for an official known as the clerk of the crown to read out the titles of the bills to which the royal assent is to be given. Then another official, known as the clerk of the parliaments, merely pronounces a phrase in the old French of Plantagenet days, while the lords commissioners look on in silence. Ordinary public bills are assented to with the words "Le Roy le veult." Appropriation bills receive the benediction "Le Roy remercie ses bon sujets, accepte leur bénévolence, et ainsi le veult." Private bills are assented to with the declaration "Soit fait comme il est désiré." In the old days, when the king decided to withhold his assent from a bill, he merely promised (like a modern politician) that "Le Roy s'avisera"; but not for more than two hundred years has any English monarch greeted a measure with these procastinating words.

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[1] It is not necessary, of course, that the monarch shall attend in person even on these occasions. The duty may be delegated by him to somebody else.

So the royal assent is now a picturesque formality and nothing more. The king does not even read the measures that receive his assent.[1] Why should he? He assumes no responsibility for his actions in assenting to them. It is enough that they have been passed by both Houses of Parliament. They would not have been so passed if the king's ministers were opposed to them. So it is the ministers who have the responsibility. In parliament no one ever criticises any official act of the king. It is the ministers who form the target if anyone has criticism to offer.

Why the royal assent to laws cannot be withheld.

What would happen if some headstrong king should decline, against the advice of his ministers, to give the royal assent to a bill passed by parliament? That is not a hard question to answer. In any such highly improbable contingency the ministry would at once resign. It could not continue in office with a king refusing to follow its advice. Then the king, presumably, would summon a new prime minister and ask him to form a cabinet. But the House of Commons would assuredly refuse its support to the new prime minister, for otherwise it would be taking the king's side against itself. So there would be nothing to do but to dissolve the House and leave the issue to the people. This would be a dangerous step for any king to take, because an adverse decision at the polls would inevitably require his abdication. There is not much likelihood that any British king, so long as he retains his sanity, will ever press the issue to such a perilous point. The statement is sometimes made, by way of giving a realistic touch to the situation, that "if parliament were to send the king his own death warrant, he would be under the necessity of giving his assent to it." But parliament has long since ceased to enact death warrants, or bills of attainder, either for the king or for anyone else.

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[1] George III, for a time, tried to do it but found the task too great. It is the prime minister's duty to inform the king concerning the general purport of all important legislative proposals that are pending in parliament; in this way the monarch is enabled to keep himself sufficiently posted without reading the measures.

Back in the days of Charles II, one of his courtiers after an evening of revelry wrote on the door of the royal bedchamber this little epitaph:

> "Here lies our Sovereign Lord, the King,
> Whose word no man relies on:
> He never says a foolish thing
> And never does a wise one."

To which Charles replied that it was all very true inasmuch as his sayings were his own whereas his acts were the acts of his ministers. In the making of laws the king is a participant, but his participation can be neither wise nor foolish, and he assumes no responsibility for it.

The absence of royal authority does not imply the absence of royal influence.

Now although the king has lost all formal authority in relation to the making of laws he is not altogether without influence in this field of government. As a matter of courtesy, fortified by usage, the king is always kept informed concerning the measures which his ministers propose to lay before parliament. It is not customary to bother the king with matters of routine or detail, but when important measures are being considered by the cabinet it is the duty of the prime minister to ascertain his opinion, if he has any. This opinion may be given much or little weight, and in any event the opinions of the ministers must prevail if they insist upon it. A great deal depends, of course, upon the ability and personal force of the monarch. Something also hinges upon the personal relations between him and his prime minister. These relations may be intimate and cordial, or they may be of a reserved and strictly official character. Queen Victoria, for example, was on very friendly terms with Disraeli, who consulted her on all the high spots of governmental policy; but she disliked Gladstone, partly because he bothered her with tedious details. Her grandson, George V, has managed to maintain cordial relations with prime ministers of widely-varying types and has been freely consulted by them all. To what extent his personal opinions have been deferred to by these ministers there is no way of finding out. Interchanges of opinion between the king and his ministers are in the highest degree confidential on both sides.

The crown's part in administration:

1. Appointments.

The crown is not only a participant in lawmaking but is the titular chief executive as well. All executive authority, of whatever character, is exercised in its name. It is the function of the crown, for example, to see that the laws are observed and enforced. To this end all the higher executive and administrative officers of the realm (with a few exceptions of slight importance) are commissioned in its name.[1] With some exceptions, also, the crown has the right to suspend or dismiss these officers of administration. Thus it controls the entire personnel of civil administration. Similarly it controls the army, the navy, and the air service.[2] War can be declared and peace concluded by the crown without consulting parliament. But the money needed for carrying on a war can only be had by parliamentary action.

2. Foreign relations.

The crown is also the treaty-making authority, and all international agreements are made in its name. Treaties can be drawn, ratified, and put into operation without parliamentary concurrence, provided, of course, that they do not stipulate for the cession of territory, or the payment of money, or for some other action which only parliament can authorize. All foreign relations are conducted in the name of the crown, and all instructions to British ambassadors or other diplomatic agents are so worded. It will be observed, therefore, that the British crown possesses all the executive powers that are vested in the President of the United States, and more besides.

But let it be once more reiterated that the crown as an institution, and the king as an individual, are two entirely different things. Sir Sidney Low has remarked that the British crown is merely "a convenient working hypothesis." It is a good deal more than that. A government cannot be conducted by an hypothesis, and the government of Great Britain is directed by the crown. On its initiative all the powers enumerated in the preceding paragraphs are exercised. The crown governs England with the approval of the House of Commons.

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[1] This does not mean, of course, that the commission of every civil, military and naval officer is actually signed by the king. Much less does it mean that the appointees are selected by him.

[2] In earlier centuries, of course, the king actually led the army in the field. George II, in the war against France, was the last British monarch to do this, although George IV in 1827 asserted that in the event of war occurring during his reign he would lead the troops in person. To forestall such an eventuality the cabinet insisted upon the appointment of the Duke of Wellington to the active command of the British forces.

All the powers of the crown are put into action by the prime minister and his colleagues.

Now this is merely a figurative way of saying that the prime minister and his cabinet govern the country. It is they who direct every exercise of the royal prerogative. The prime minister of Great Britain is that country's chief executive, but he works under cover of an ancient mask. He and the other ministers see that the laws are carried into effect. They spend the money that parliament appropriates. They decide who shall be appointed to office. They direct British foreign policy and make treaties. They even decide issues of war and peace. When Great Britain declared war against Germany in 1914 it was the cabinet, on its own responsibility, that threw the British empire into the great conflict. But no cabinet would ever take so momentous a step unless it felt certain that parliament would approve its action.

The completeness of the cabinet's control as illustrated by the appointing power.

The cabinet, therefore, and not the king, is custodian of the powers of the crown. The completeness of this control is shown by the fact that it extends (with a few exceptions) even to the selection of the king's personal staff. The king's private secretary is his own choice and does not change with the advent of a new ministry. He is a very useful channel of communication between the king and the cabinet on confidential matters. But the other officers of the royal household are in most cases appointed with the approval of the cabinet and change when the ministry changes. This might seem to be carrying the ministry's guardianship to an absurdity and Queen Victoria once raised a fuss about it.[1] But it is a wise custom because various episodes in English history point to the desirability of making sure that those who are in immediate attendance on the king or queen shall not be hostile to the ministry in power.[2]

So, when parliament confers authority on the crown it does no more than delegate power to one of its own committees, for

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[1] In 1839 Sir Robert Peel was asked by Queen Victoria to form a ministry. Before doing so he requested an assurance that certain high-titled ladies in the queen's household (known as the Ladies of the Bedchamber) should be replaced by others who were in sympathy with Peel's party. The queen declined to agree and Peel thereupon refused to accept the post of prime minister. Somewhat later the queen mollified her objections, whereupon a compromise was arranged and Peel took office.

[2] Particularly in the reign of Queen Anne when Sarah, Duchess of Marlborough, used her position as Mistress of the Robes to influence the queen's attitude and actions on various political questions. To such a degree was this influence exerted that the then-current aphorism, "Anne reigns but Sarah governs," had a good deal of truth in it.

Why parliament so readily bestows powers on the crown.

the cabinet is the great standing committee of the Lords and Commons. It is customary for parliament to provide from time to time that various things may be done by order-in-council, that is, by the cabinet in the name of the crown. To the king as an individual parliament seldom grants any authority by statute. To do so would be out of keeping with the whole spirit of the British constitution.

The crown and the "fountain of justice."

It is often said that the king is "the fountain of justice and honor." Englishmen are fond of this expression, but it is entirely figurative, a survival from the old, far-off, forgotten days when the king actually intervened to set aside the decisions of the courts and when the king's conscience spoke the last word in judicial administration. Today, however, neither the king nor the crown is a fountain of justice save in one respect, namely, in the case of those issues which come before the judicial committee of the privy council. There, as will be seen later, the crown still functions as a court of last resort.[1] But the crown cannot of itself establish any new court, or change the jurisdiction or procedure of any existing court, or alter the number of the judges, or the mode of their appointment, or the tenure of their office. It is true that the crown appoints the judges of the regular courts, but it has no control over their actions during good behavior. It is also true that the crown has the prerogative of pardon but this is not a judicial power; it is of the nature of an executive interference with the normal control of justice.

And the "fountain of honor."

The expression "fountain of honor" also goes back to the time when the monarch, at his own discretion, had the right to create new peers, to bestow baronetcies, knighthoods and other honors, and even to grant pensions. Henry VIII confiscated most of the estates held by the monasteries and with these lands endowed many new families. The Stuart kings made peers of their personal favorites. But the king's personal preference no longer controls the making of peers. All public honors are now bestowed by the crown—by the cabinet in the king's name. On appropriate occasions each year a list of peerages and other honors is announced. This list has been prepared by the prime minister, and it may contain the names of persons who are utterly unknown to the king. It may even include the names of some who are personally obnoxious to him. There is at times a truly Pickwickian ring to the official announcement that "His Majesty has been graciously pleased" to confer a peerage upon some hardened old sinner. The prime minister, however, is mindful of the king's sensibilities in making up its list. As a matter of courtesy he will add a name or strike off a name at the monarch's request. But such action must in all cases be governed by the fact that the prime minister, not the king, is responsible to parliament for inclusions or exclusions. If the list of honors is open to criticism, it is he, and not His Majesty, who must bear the brunt of it.[1]

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[1] *Below*, chap. xv.

The crown and the church.

Since the Act of Supremacy was passed, nearly four hundred years ago, the headship of the Church of England has been vested in the crown. The crown, accordingly, appoints the archbishops, bishops, and other ecclesiastical dignitaries. In making their ecclesiastical selections, however, the ministers usually give deference to usage in promoting clergymen from lower appointments to higher, but they are under no obligation to do this. They have a free hand in the matter. Prior to 1919 parliament was the legislative organ of the Established Church, but in that year it enacted the Church of England Assembly (Powers) Act which enables the national assembly of the Church of England, now a statutory body, to pass measures which, under certain limitations, can be presented for the royal assent if a resolution to that effect is passed by both Houses of Parliament. Such measures may relate to any matter concerning the Church of England and may actually repeal an act of parliament. This represents a very remarkable development in English lawmaking, a step in the direction of legislative devolution. The crown, as head of the Established Church, is also vested with final authority in certain matters of ecclesiastical discipline; but it has been provided by statute that such controversies shall be heard and determined by the judicial committee of the privy council.

Why the monarchy endures.

English history abounds in paradoxes, and not least striking among them is the paradox that the crown grows stronger as democracy spreads. The powers of the king have dwindled to insignificance; but the strength of the crown has become steadily greater during the past hundred years. Now the question naturally arises: If the authority of the crown is no longer exercised by the king, why retain the kingship at all? Why not let the prime minister assume in name, as in fact, the executive headship of the nation? What good purpose is served by continuing to use fictions and figures of speech which have long since ceased to square with the realities? Would it not be better to abolish the institution of royalty and save the half million pounds per annum that it costs the taxpayers of Great Britain?

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[1] On one occasion, some time ago, a great deal of public criticism greeted the publication of an "honors list." Thereupon a committee was appointed to make recommendations for the future, and certain arrangements were provided as a safeguard against the granting of titles in improper cases.

Reasons of sentiment.

A satisfactory answer to this question would be neither short nor simple. Nor would it carry much conviction to the minds of those who do not understand the traditional conservatism of the British temperament or the actual workings of parliamentary government under the party system. Motives of sentiment naturally count for a good deal in this matter. No country is disposed to throw overboard, without considerable provocation, an institution that it has maintained for over a thousand years. And least of all are Britishers disposed to do anything of the sort unless they are assured that some very substantial advantage would result from their action. But sentiment is not the only theory that keeps the monarchy in the saddle. There are practical considerations as well.

Some practical reasons.

The first, and doubtless the strongest practical reason for the continuance of the royal office is the obvious fact that if it were abolished something would have to be put into its place. It would be necessary to appoint, or to elect, or in some other way to secure a titular head of the nation. The prime minister is not the titular chief executive in any country. It is impossible to conceive of a stable parliamentary government without there being at its head someone whose tenure of office is beyond the fickleness of a parliament or a congress. This tenure must be long enough to assure stability—be it four years as in America, seven as in France, or for life as in Britain. If the monarchy were abolished and a republic set up, it would be necessary to provide for a Lord Protector, or a President, or some other functionary chosen either by parliament as in France, or by the people as in America. The question would then arise: What official powers should this elective chief of state possess? If he were given a large measure of independent authority, as in the United States, it would necessarily be at the expense of powers now possessed by the cabinet and through it by parliament. In other words there would be an end to the supremacy of the House of Commons. If, on the other hand, the new chief executive were given no substantial power, or as little as is possessed by the President of the French Republic, he would be only perpetuating the kingship under a new name. And there would be the constant danger that this elective head of the state, although endowed with no real power, would strive by devious means to obtain it. He would be under constant temptation to do what President Millerand did in France not long ago—with similar results.[1] When the titular chief executive has no real power there is a good deal to be said for keeping the post hereditary.

Englishmen have grown accustomed to the direct and continuous control of the House of Commons over the executive branch of the government. They have never looked with favor on the doctrine that one branch should serve as a check upon the other. There is no likelihood that they would consent to the establishment of an independent presidential executive on the American model. The only alternative is an executive like the French president who neither reigns nor governs. That, to the mind of the average Englishman, would be no improvement upon what he already has.

Tangible services which the monarch performs.

The English king has parted with his powers, or "holds them in abeyance" as some prefer to say, but this does not mean that he performs no useful service. The whole executive authority returns temporarily to his hands whenever a cabinet resigns. During the brief interval between the resignation of one prime minister and the installation of another, the king is the sole depositary of executive power. He is the one personage in the realm who stands aloof from partisan strife and can be depended on to act impartially. He is the umpire who sees that the great game of politics is played according to the rules. There are times, moreover, when a wise king can assume, in the public interest, the rôle of peace-maker between warring political factions whose hostility is working injury to the country as a whole. There can be no doubt that the influence of George V was helpfully directed towards the settlement of the Irish question.[2] In

Some examples.

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[1] See *below*, chap. xxi.

[2] See the documents printed in E. M. Sait and D. P. Barrows, *British Politics in Transition* (Yonkers, N. Y., 1925) chi. i.

diplomacy, too, the king may at times render a signal service to the nation. Edward VII gave a notable illustration of this. When he came to the throne his country was without a friend in Europe. It was his desire to establish an *entente* with France, a desire which had the cordial support of his ministers. Within a few years, by a combination of persistence and tact, he managed to achieve his aim. His success changed the history of the world. For the world would be differently constituted today if England and France had been at swords' points in 1914 as they were in 1901.

A symbol of imperial unity.

Finally, the king supplies the one tangible link which holds together all the members of the British commonwealth of nations, including Great Britain, Ireland, India, Canada, Australia, South Africa and the other dominions. To these dominions the legislation of the British parliament does not ordinarily extend. They have their own parliaments and their own cabinets. The strongest formal bond is the allegiance to the king; in this sense the monarchy is the outstanding symbol of imperial unity.

The king as the head of British society.

In every country, no matter how democratic it may claim to be, there are bound to be ranks and gradations of society. These gradations may be based upon birth and lineage, or upon length of residence in the country, or upon wealth, or upon political prominence. In Great Britain, for many centuries, social status has rested very largely upon birth and lineage. This being the case, it is natural that the headship of British society should belong to the monarch. The king, the queen, and the members of the royal family are in a position, if they choose, to set the social standards of the nation. Whether they have performed this function better or worse than it would have been performed by a social leadership based upon wealth or upon popular election is a question upon which outsiders may disagree, but on which most Englishmen do not. Social leaders will arise under any form of government, and they will exercise a dominant influence not only upon the manners and tastes of the people but upon morals, art, literature, education and benevolence. A royal court, when it is minded to set a good example, can do it in a very effective way. It can do much for the elevation of the public morality and for the improvement of the social amenities, for the advancement of learning, and for the enhancement of the national pride.

Nothing would be gained in Great Britain by abolishing the monarchy.

The abolition of the kingship would not make England any more democratic than she is today, for the people already control to the fullest possible extent all branches of their government. On the other hand the abolition of the monarchy would necessitate considerable changes in various branches of life not directly connected with politics. It would leave the Church of England without a titular head; it would compel a recasting of the social structure; it would sever the strongest formal tie that binds the dominions to the mother country; it would substitute an abstraction for a visible symbol as the basis of British allegiance. The saving in expenditure would be inconsequential, for the cost of maintaining the kingship is only one-fiftieth of one per cent of the total British budget.

The arguments for abolishing the British monarchy are like those which are usually put forth in favor of reformed spelling in that they would carry more weight if people were not habituated to what they have. Englishmen, like all other people, and perhaps to an even greater extent, prefer what they are accustomed to—whether it be in diet, recreation, or political institutions. With a clean slate to work upon it is improbable that the British people would set up, in the twentieth century, an hereditary monarchy, a House of Lords, and an Established Church. Neither would the people of the United States create an electoral college as part of the machinery for electing a president, nor give all the states equal representation in the Senate, nor let every state make its own divorce laws. Both countries proceed, and wisely so, on the principle that "governments long established should not be changed for light or transient causes."

Popularity of the English kingship.

The popularity of the kingship among all ranks of the British people has often been commented upon by outsiders. It is as great today as it ever was, perhaps greater. A century ago it was at low ebb, but it made a notable advance during the long reign of Queen Victoria (1837-1901). There have been proposals to abolish the House of Lords, to reform the cabinet, and even to curb the power of the House of Commons; but from no source worthy of consideration has there emanated any proposal to abolish the monarchy. Six or seven decades ago there was a republican group in England and it seemed to be gaining ground. Today it has all but disappeared. Even the leaders of the Labor party, although some of them profess to be "republicans in principle," are agreed that the monarchy must be retained, essentially in its present form, because there seem to be insuperable difficulties in providing for an elective headship.[1] The masses of the people have come to realize that the monarchy, seated above the turmoil of personal and partisan strife, neutral in politics and with no ambitions to gratify, lending dignity to government but not standing athwart the path of the public will —they have come to realize that whatever may be the causes of their varied troubles, the monarch is not one of them. If the crown, as President Lowell has said, is no longer the motive power of the ship of state, it is the spar upon which the sail is bent, and as such it is not only a useful but an essential part of the vessel.[2]

There is no single volume on the development of the British monarchy, and it would be impossible to cover the subject except by writing a constitutional history of the realm. On the development of the kingship to the close of the middle ages there is much material in the standard works of Freeman, Stubbs, Ramsay, Haskins, Maitland, Round, Norgate, Green, Tout, Vickers and Davis—the titles of which may be found in the card catalogue of any good library. The vicissitudes of the monarchy during the Tudor and Stuart periods are narrated in the works of Gardiner, Pollard, Fisher, Innes, Montague, Trevelyan, and Firth, all of which are well known to every serious student of English history. Lecky and Walpole cover the eighteenth century. For the period 1760-1860 there is an excellent survey in the first volume of May and Holland (see *above*, p. 36).

The most recent study of the powers and functions of the crown at the present time is Sir William Anson's *Law and Custom of the Constitution* (5th edition, Oxford, 1922-1925), but there is an excellent chapter on the subject in Lowell's *Government of England* (Vol. I, chap. i). Discussions of varying value may be found in T. F. Moran's *Theory and Practice of English Government*, chaps. ii-iii; Sir J. A. R. Marriott's *English Political Institutions*, chap. iii; Walter Bagehot's *English Constitution;* Lord Courtney's *Working Constitution of the United Kingdom*, chap. xii; Sir Sidney Low's *Governance of England*, chaps. xiv-xv; and Edward Jenks', *Government of the British Empire*, chaps. i-ii. Mention should also be made of James A. Farrer's volume on *The Monarchy in Politics* (London, 1917).

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[1] Sidney and Beatrice Webb, *A Constitution for the Socialist Commonwealth of Great Britain* (London, 1920), pp. 109-110.

[2] *Government of England*, Vol. I, p. 49.

CHAPTER IV

THE CABINET

While every act of the state is done in the name of the crown, the real executive head of England is the cabinet.—*A. V. Dicey*

The cabinet has no legal basis.

The cabinet, as Gladstone once remarked, is "the threefold hinge that connects together for action the King, the Lords and the Commons." It is, he went on to say, "the most curious formation in the political world of modern times. It lives and acts simply by understanding, without a single line of written law or constitution to determine its relations to the monarch, or to parliament, or to the nation."

The cabinet is the most important single piece of mechanism in the structure of British government. It is the pivot on which the whole machine revolves. It is sometimes spoken of as a committee of the privy council, since all members of the cabinet are members of that body; and it is also called the great standing committee of parliament, which is also a correct appellation inasmuch as members of the cabinet have seats in one of the two parliamentary chambers. But the cabinet of Great Britain is more than a committee of council or legislature. It is the guiding and directing force in government. Without a knowledge of its structure and functions no one can understand the responsiveness of British administration to the will of the people. Yet in spite of this far-reaching importance there is not a single word in the written laws concerning its composition, its powers, its duties, or its responsibilities. The laws of England simply ignore its existence.

Its early development.

Among the governmental institutions of the modern world the British cabinet is perhaps the best example of what usage can build up. The old Curia Regis of Norman times, it will be remembered, became the progenitor of the privy council, a body which gave advice to the king and helped him with the routine work of administration. Its members were chosen at the discretion of the monarch, and although they were often members of the nobility (and hence members of parliament) it was not essential that they should be. During the Tudor and Stuart periods the privy council developed into a powerful body and through its various committees conducted almost every branch of the national administration. Nothing was exempt from its vigilant supervision. Its members, moreover, were not responsible to parliament but to the king alone. The only way in which parliament could reach them was by impeachment and even this method was not always effective, for the king could pardon an impeached privy councillor in case of conviction.

A wheel within a wheel.

So the privy council kept growing in size and expanding its functions. With the growth of its membership and the multiplication of its committees, the council eventually became so unwieldy that it ceased to be useful as an advisory body. Its numerous members could not agree on anything without interminable debates. The rank of privy councillor, moreover, was frequently bestowed by the king as an honorary distinction upon men who rarely or never attended the council's meetings. It was natural, therefore, that the king should adopt the practice of summoning to his private consultation-room, or "cabinet," a few selected members of the council who could give him advice without long formalities or palaver. The exact date at which this practice originated is not known; it probably began some time before outsiders learned of it.[1] In the time of Charles II, at any rate, the cabal or cabinet consisted of five members, all of whom were noblemen and close friends of the king.

The Denby dismissal and its significance

This virtual supersession of the privy council, so far as its advisory functions were concerned, was not relished by parliament. The House of Commons looked upon it as an attempt "to introduce a tyrannical and arbitrary way of government." The Commons desired to control the royal advisers, which it could not do so long as the king chose them without public announcement and conferred with them in secret. There remained, nevertheless, the weapon of impeachment and it was by using this bludgeon that parliament eventually made good its contention that whoever gave the king advice, whether in public or in secret, should do so at his own peril if the advice turned out to be bad. This principle was definitely established in 1679 when parliament found a way of removing one of the king's most trusted counsellors despite all that Charles II could do to save him. The adviser in question was Thomas Osborne, Earl of Denby, who held the office of lord treasurer. When the House of Commons proceeded to impeach him, the king dissolved it and ordered a new election. But the new House, when it assembled, renewed the attack. Denby pleaded that whatever he had done was by order of the king, and that the king could do no wrong. But parliament went ahead with the prosecution and sent Denby to the Tower. By so doing it definitely established the principle that no minister could shelter himself behind the legal immunities of the throne.

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[1] The earliest mention of the term "cabinet" is in Bacon's *Essays*. Clarendon, in his *History of the Rebellion* (Book II, Vol. I, p. 244) mentions that a "committee of state," which was reproachfully called the Junto, and enviously called the cabinet council, existed in 1640. It was then composed of Archbishop Laud, Lord Strafford, Sir Henry Vane, and six others.

How it created a dilemma.

Here was an anomalous situation and one that could not continue. The king had a right to choose his own advisers. No one questioned this right which had existed from time immemorial. It was his prerogative to choose men in whom he had confidence and to entrust them with the routine work of administration, this work to be done in accordance with the royal instructions. But on the other hand parliament had now made good its right to remove by impeachment any royal adviser whom it did not approve. Not only that but it might punish him for having wrongly advised the king, or for having carried out the royal instructions to the detriment of the national welfare. Surely this was a tight place for any minister to be in. If he disobeyed the instructions of the king he would be dismissed from office; if he obeyed them he was liable to be impeached by parliament and sent to prison. No government could function under such an arrangement. Some plan of unified responsibility had to be devised.

A solution found in the establishment of full parliamentary control over the cabinet.

Now the Commons had clear ideas as to how this might be done. Many years prior to Denby's dismissal it had offered a solution of the problem by declaring in the Grand Remonstrance that the king ought "to employ such counsellors only . . . as parliament may have cause to confide in." In other words the responsibility of the king's advisers could only be unified by virtually allowing parliament to choose them. But Charles I would not listen to this proposal; if he had done so he might have saved both his throne and his head. Nor was it accepted by Cromwell during his term as Lord Protector. Charles II, after the restoration of the Stuart monarchy in 1660, also disregarded it, and so did James II during his short term on the throne. But the House of Commons continued to urge the idea at every opportunity and in the end its perseverance was rewarded. William and Mary, on their accession to the throne in 1688, agreed to the demand, and the doctrine that the king's ministers are responsible to parliament has not been seriously disputed since that time.

A final step—ministerial solidarity.

But although the principle was established in 1688 the method of ensuring the effectiveness of parliamentary control over the cabinet was still to be worked out. Prior to the Revolution of 1688 the kings had chosen their advisers from among their own intimate friends and supporters. The new monarchs began the innovation of selecting their advisers from both the major party groups in parliament. In this they intended well, their aim being to give both Whigs and Tories an equal measure of recognition. But the plan worked badly, as anyone might have predicted. Ministers drawn from two opposing political parties could not work together, and the friction grew more pronounced as party lines become more plainly drawn. The cabinet proved to be a house divided against itself; it could not give unanimous advice; one faction had the confidence of a majority in parliament while the other did not. As the only way out of the difficulty it was decided to choose all the ministers from the majority party, which happened at this time to be the Whigs. The cabinet of 1697, popularly known as Sunderland's *Junto*, was the first British ministry constituted on the principle that all its members should possess the confidence of the dominant party in parliament. The new practice was generally followed by Queen Anne even to the extent of having Whig ministers when her own personal sympathies were with the Tories.

But it takes time to establish a custom of the constitution and even at the close of Anne's reign the principle of ministerial solidarity was not beyond the possibility of an overthrow. It is entirely possible, indeed it is probable, that if Anne had been succeeded by an ambitious and firm-willed king the bi-partisan cabinet system would have been restored. As it turned out, however, the situation became favorable for continuing the practice which William and Anne had begun.

The work of Walpole.

George I, who succeeded Anne, was a dull-witted Hanoverian who knew nothing of English political traditions. He neither spoke nor understood the English language. The details of British domestic policy did not interest him in any way. Accordingly he abstained from presiding at meetings of his cabinet and gave this function to one of its members, Sir Robert Walpole, who thus became the first prime minister in the modern sense. There had been chief ministers of the king long before Walpole's day—Wolsey and Thomas Cromwell under Henry VIII, Burleigh under Elizabeth, Strafford under Charles I, and Clarendon under Charles II. But these chief ministers did not hold their posts by virtue of their being the recognized leaders of the dominant party in parliament. Walpole was the first royal adviser to preside at cabinet meetings and at the same time serve as the leader of the House of Commons. He was, besides, a statesman of great competence and sagacity. For twenty years, while he held the confidence of a majority in the House of Commons, George I and George II let him govern the realm. To keep a majority on his side Walpole resorted to methods which are now regarded as disreputable in all honest governments; but it can at least be said that he never tried to hold his post without a parliamentary majority back of him. When, in spite of his skill and corruption, he failed to command a majority (1742), he resigned at once, and this notwithstanding the fact that he still retained the full confidence of the king.

Emergence of the cabinet system into its present form.

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During his long lease of power Walpole moulded the cabinet system into the form which it retains today. He established the principle that the king, having chosen a prime minister, should leave to this minister the selection of the other ministers. He made himself the sole medium of communication, on all important matters, between the ministry and the monarch. Accepting the doctrine that the cabinet must at all times command the support of a majority in the House of Commons, he insisted upon the corollary that he, in turn, was entitled to his party's support. He demanded, and enforced his demand, that every Whig member of the House should rally behind the cabinet on all issues. The development of the cabinet and of the party system were thus made to proceed hand in hand. The one assisted the other.

In 1760, however, things took a somewhat different turn. George III, who came to the throne in that year, made a spirited

The attempt of George III to control it.

attempt to revive the personal influence of the monarch upon the course of national policy. Realizing the futility of any attempt to hold ministers in office without a parliamentary majority behind them, he bestirred himself to build up, in the membership of the House, a party of his own,—the king's friends they were called. With the Tories as a nucleus he was able to create a parliamentary majority for prime ministers of his own choosing, such as the Earl of Bute and Lord North. But this procedure, founded as it was upon the misuse of the royal influence and the temporary disorganization of the king's opponents, could not long endure. It came to an end in the later years of his reign.

The system continues to evolve.

For the past hundred years, therefore, the outlines of the British cabinet system have remained unchanged, but its various features have become clarified by a series of precedents. It has become an established rule, for example, that when a prime minister resigns the entire cabinet must go out of office with him, in other words that the cabinet's responsibility is collective. It has become settled, as will be explained a little later, that members of the cabinet are not only responsible to the king and to parliament, but also to one another. With the steady development of the party system, moreover, the functions of the cabinet in the matter of framing the party program and materializing it into legislation have been given emphasis. The whole system has been shaking itself down to a stable basis; it has done this slowly because it rests upon usage, and the evolution of usage is a slow process. Nor is there any reason to think that this evolution has yet come to an end. The English system of cabinet government is still evolving and through future generations will doubtless keep on doing so.

Varying size of the cabinet.

Walpole's cabinet consisted of from seven to ten members. But as the functions of national administration widened each succeeding cabinet tended to grow larger until the membership at the close of the nineteenth century was more than twenty. Meanwhile some thirty or more additional ministers were given administrative posts although they were not members of the cabinet. In piping times of peace it was possible to do business with twenty members sitting around the cabinet table, but when the strain of the world war came upon Great Britain the size of the cabinet proved to be a hindrance to the prompt reaching of conclusions. As Lloyd George said: "You can't wage war with a Sanhedrim." In 1916, therefore, a war cabinet of five (later six) members was created within the regular cabinet circle and this smaller body was given full control of Britain's war program. Of the six members only one (the chancellor of the exchequer) had any administrative duties. The rest of the directory, including the prime minister, were left free to give their waste energies to the prosecution of the war.[1] The plan fully justified itself and the suggestion was made that its merits should be perpetuated by having a cabinet of ten or twelve members, with some reduction in the amount of their departmental duties.[2] But nothing came of this proposal. In 1919 the old cabinet organization of about twenty members was quietly restored and it has since remained.

How its members are chosen.

How is the cabinet organized, and what are its functions at the present time? Before entering upon such a discussion it is well to define certain terms which Englishmen use in describing the executive branch of their government. These terms are privy council, ministry, cabinet, and "the government." The privy council is the body of royal advisers which still, in theory, controls the actions of the crown. Most acts of the crown are declared to be "by and with the consent of the privy council." But in point of fact the privy council is a body with no real advisory functions at all. When a new cabinet is being formed, its members are appointed to the privy council unless they are already privy councillors, and they remain privy councillors for life. No one is ever officially appointed a member of the cabinet because the laws do not recognize the existence of a cabinet. Thus the privy council, at any given moment, contains not only the cabinet ministers who are in power but all living members of former cabinets. Appointments to the privy council are made in the name of the crown, but always on the advice of the prime minister. Men are sometimes appointed to it, as an honor, with no intent that they shall become members of the cabinet[3] As a body the whole privy council is never called together except at

Some preliminary explanations: privy council and cabinet.

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[1] For a further discussion see John A. Fairlie's *British War Administration* (Oxford, 1919).

[2] In the *Report of The Machinery of Government Committee* of the Ministry of Reconstruction (1918), commonly known as the Haldane Report.

[3] Today the privy council has about 350 members.

the accession of a new monarch, and for other ceremonial purposes. It has become a mere piece of official machinery, inasmuch as the cabinet, not the privy council, now advises the crown and takes full responsibility for the advice which it gives.

Ministers and cabinet ministers.

Another distinction is somewhat confusing to the outsider, namely, the distinction between the ministry and the cabinet, between ministers and cabinet ministers. All members of parliament who hold important administrative posts of a political character, and who go out of office when a cabinet resigns, are known as ministers. There are more than fifty of them in all. But there are only twenty-one cabinet ministers. The ministry does not meet as a body for the transaction of business, for it has no collective functions. It is only the cabinet ministers who meet.

An analogy.

The functions of a minister (unless he is a cabinet minister) are individual functions only. The distinction may be illuminated, perhaps, by reference to the government of the United States where the President, on coming into office, appoints a considerable number of higher administrative officials who ordinarily go out of office when his term expires. These include not only the ten members of the President's cabinet but an even larger number of assistant secretaries and other high officials who are not of cabinet rank. We have no term which applies to this entire group of high officials. Englishmen would call it "the ministry."

A definition of the cabinet.

The cabinet, therefore, is the smallest of the three groups and the only one that has a collective responsibility. Briefly it may be defined as a body of royal advisers chosen by the prime minister, in the name of the crown, with the approval of a majority in the House of Commons. It is composed of those ministers whom the prime minister designates to membership, but the prime minister in making his designations is guided largely by precedent. Some high ministerial posts are always of cabinet rank; some less important ones invariably are not. There are a few which may or may not be of cabinet status as the prime minister decides.

The ministers and "the government."

Finally there is "the government," a term which Englishmen use in a sense unfamiliar to outsiders. When they speak of a change in the government, or a change of government, for example, they do not mean a change in the form of government.

When they say that "the government is likely to fall" they do not mean that the monarchical system is about to be supplanted by something else. By "the government" they mean the executive authorities who are in control for the time being—namely, the prime minister and his ministerial colleagues. It is they who are responsible for the passage of "government measures" by parliament. The term most nearly analogous in America is "the administration," which is somewhat loosely used to include the President and his advisers.

The prime minister: How he is chosen.

Since the days of Sir Robert Walpole the chief adviser of the crown has been known as the prime minister. The king, although he goes through the gesture of selecting this official, has very little discretion in making the choice. He summons, and by usage must appoint, the leader of that political party which controls a majority in the House of Commons. If no single party controls a majority he appoints some leader who can either form a coalition or otherwise assure himself of a majority on important measures. Under the two-party system, which prevailed in England until recently, the king's task was very simple. When a prime minister resigned by reason of a defeat at the polls or on the floor of the House, he merely sent for the leader of the victors and invited him to assume office. But when three political parties are represented in the House, with no one of them controlling a majority, the royal function is not so simple. He must then use his own judgment as to which leader he will summon. The main thing is that whoever takes office as prime minister shall be able to command a majority. If he can do this from within the ranks of his own party so much the better. If he cannot, then he must secure it by some coalition, compromise, or understanding with one of the other parties. When Mr. Ramsay MacDonald was invited to become prime minister in 1923 the Labor party did not control a majority in the House. But before taking office he satisfied himself that a sufficient number of Liberals would probably support him as against the Conservatives—which they did for a time.

} Parties

He is always a party leader.

In any event the prime minister is always chosen from among the two party leaders, or the three party leaders, as the case may be. It is inconceivable that anyone other than a recognized leader would be called upon. In 1894 when Gladstone gave up the prime minister's post, leaving his party for the moment without a leader, Queen Victoria did not call a successor until after she had assured herself that her personal choice, Lord Rosebery, would be acceptable to the Liberals. In 1922, when Mr. Lloyd George tendered his resignation, there was no recognized leadership in the ranks of the Conservatives. The king sent for Mr. Bonar Law who agreed to accept the post of prime minister in case the Conservative party should formally designate him as its leader, which it did. Each political party determines for itself the methods by which its own leader is chosen. Ordinarily, however, the selection is made by a caucus which is attended by the party's membership in the House of Commons together with various other prominent party workers.

leader
[illegible] there

Who the prime ministers have been.

During the two hundred years 1722-1922, Great Britain had thirty-seven prime ministers. This is in sharp contrast with the experience of France which has had a larger number of prime ministers in one-quarter of the time. These thirty-seven prime ministers of Great Britain, from Sir Robert Walpole to Bonar Law, headed fifty-three cabinets.[1] Ten British premiers held the office twice; two of them three times; and one (Gladstone) was prime minister four times. Thus each English ministry has remained in power for about four years on the whole, and the thirty-seven prime ministers have averaged a little less than six years in office. While any British subject is eligible to the premiership it is significant that twenty-six of the thirty-seven were Englishmen by birth. Five were Scotchmen, three Irishmen, one a Welshman, one a Canadian, and one (Disraeli) was of foreign extraction but of English birth. Twenty-five were peers or sons of peers, and all except three or four were men of considerable wealth. It is worth remarking that thirty-one out of the thirty-seven were university graduates—seventeen of Oxford, thirteen of Cambridge, and one of Edinburgh. This is striking evidence of the prominent part which the two oldest universities of England have taken in the public life of the nation.

Birth and education.

Age and political leanings.

Nearly all the prime ministers went into public life at an early age; eleven became members of parliament at twenty-one, and the average for the entire list is twenty-five. No such precocity in politics has been shown by the presidents of the

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[1] Most of the data upon which this and the next two paragraphs are based have been taken from the Hon. Clive Bigham's volume on *The Prime Ministers of Britain* (New York, 1922).

United States. The average age for becoming prime minister, however, is fifty, which indicates that the office has demanded a considerable apprenticeship. There have been notable exceptions, of course, as in the case of the two Pitts; but for the most part the younger politicians have had to bide their time. As for their party affiliations, twenty-one prime ministers were Whigs or Liberals, while only fifteen were Tories, Conservatives, or Unionists. One of them, the Duke of Portland, happens to fall in both categories; for he held office twice, first as a Whig and later as a Tory.

Vocations and length of service.

Very few British prime ministers have had any vocation but politics. One was a soldier, one a captain of industry, and four were practicing barristers. But not all of these were dependent upon their own earnings for a livelihood. All but a few of the prime ministers have been men of means. Some had very long political careers. The Duke of Newcastle, for example, was continuously in one office or another for forty-six years, while Lord Palmerston was on the public pay-roll for forty-seven years. Gladstone was alternately in and out of office during more than half a century. Tenure of the prime ministership does not seem to have cut men's lives short, for their average longevity (omitting those still living) exactly coincides with the Psalmist's span of three score and ten. Six of them attained the age of eighty.

The "typical" premier.

The office of prime minister is not hereditary, yet heredity has apparently had its influence. More than three-fourths of those who have held the office were men whose fathers had sat in parliament before them; more than half were the grandsons of such men. More than a third could trace relationship by birth or marriage to other prime ministers. The typical premier of Britain has been, therefore, a well-born, well-to-do, well-educated man who entered politics early and made it his profession. When asked what qualities are most required in a prime minister, the younger Pitt replied: "Eloquence first, then knowledge, thirdly toil, and lastly patience." Today this order would probably be reversed.

Prime ministers and presidents compared.

More than forty years ago Mr. James Bryce (afterwards Lord Bryce) wrote an illuminating chapter on "Why great men are not chosen Presidents." In it he propounded the query why the chief executive office in the United States had not been more often filled by great and striking men. He pointed out that among the twenty-one presidents who had held this office during the century following the inauguration of Washington, only a half-dozen or so were statesmen of great or striking merit. Washington, Jefferson, Madison, Jackson, Lincoln, Grant and Cleveland were about the only chief executives of the United States who could properly be rated in 1888 as statesmen of the first rank. It is a fair assertion that more than half the presidents during the first century of the Republic were men who would now be entirely forgotten were it not for the fact that they once held the highest office in the gift of the people.

Big and little statesmen.

But the presidency of the United States has not been unique in its frequent appeal to mediocrity. On the roll of the English prime ministers one can also find a fair proportion of second-rate statesmen. Among the various prime ministers from the accession of Walpole to the restoration of Baldwin there are hardly more than half a dozen who meet the standard which Lord Bryce set up in relation to the American presidency. Walpole, the two Pitts, Peel, Palmerston, Disraeli and Gladstone exhaust the list. Possibly Canning and Salisbury might be added. But North, Newcastle, Grenville, Rockingham, Liverpool, and Campbell-Bannerman—they were neither more able nor more striking in personality than John Adams, John Quincy Adams, James Monroe, William H. Harrison, or William McKinley. The Duke of Wellington was a valiant soldier; so was Grant; but the one proved no better than the other when entrusted with the responsibilities of high civil office. There have been great men in both positions, and men of mediocre quality too. In both countries the average has been higher than in France or Italy. This matter is one on which much might be written, but this is not the place for it.

How the prime minister selects his cabinet.

The king chooses the prime minister, and the latter proceeds to select both the ministers and the cabinet ministers. Ostensibly he has a free hand in making his selections, but there are various considerations of a practical nature which he must take into account. If a new prime minister were to regard nothing but his own personal preferences in constructing a ministry, he would make trouble in the ranks of his supporters. He must see that various interests are represented. For example, he cannot select all the members of his ministry from the House of Commons, taking none from the House of Lords.[1] Both peers and commoners have figured in every British ministry for two hundred years. Even the Labor ministry which held office during the years 1923-1924 found place for four members of the House of Lords in its ranks. This, however, is a smaller proportion of peers than in any preceding ministry.[2]

Ministers must be members of parliament.

Every minister of the crown must be a member of parliament, of one House or the other. But this does not mean that he must be a member of parliament at the time of his appointment. It is enough that he become a member after his appointment as a minister. This can be arranged, of course, by making him a peer and thereby giving him a seat in the House of Lords, but the usual procedure is to "open a constituency" by inducing some member of the House of Commons to vacate his seat. This entails a special election (or bye-election) to fill the vacancy, and the newly-appointed minister becomes a candidate at this bye-election. He can do this the more easily because neither law nor custom in Great Britain requires that a candidate for the House of Commons shall live in the constituency which he seeks to represent. When, therefore, a prime minister desires to include some outsider in his ministry he arranges that a vacancy shall be created in a safe constituency. The member who gives up his seat is sometimes rewarded for his generosity by being made a peer, or given some administrative position which does not necessitate his sitting in parliament. The newly-appointed minister goes to the scene of the bye-election, gets himself nominated, and is usually elected. The prime minister so arranges it with the party organization. But the plans occasionally go awry and the constituency does not turn out to be so "safe" as was assumed.

The old and new rules as to vacating a seat on appointment to the ministry.

Until a few years ago it was a rule that any member of the House of Commons who accepted a ministerial post thereby vacated his seat and had to go back to his constituency for re-election. The origin of this rule is interesting. Back in the days when the kings of England took an active part in politics it was their practice to seek control of the House of Commons by appointing various influential members to offices of honor and profit in the gift of the crown. This constituted a species of highly refined and dignified bribery. The member of parliament took the king's bounty, became obligated to him, and thereafter voted with the king's friends. But parliament grew resentful of this practice and eventually tried to checkmate it by passing a statute which provided that any member of the House of Commons who accepted a position of profit from the crown should ipso facto lose his seat.[1]

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[1] There is a statutory provision which virtually requires that both Houses shall be represented in the cabinet. It prohibits more than five principal secretaries of state and five under-secretaries from sitting in one House at the same time.

[2] In the first cabinet of George III, no fewer than thirteen of the fourteen members were peers. It was not until after the Reform Act of 1832 that commoners began to get an equal share of representation in the ministry. Since that time they have usually constituted half or more than half the cabinet. As a rule the proportion of peers has been larger in Conservative than in Liberal ministries.

As this statute applied to most newly-appointed ministers as well as to other officials of the crown, it involved at times a serious interference with the course of public business. For whenever a new ministry took office it became necessary for several of them (those who were members of the House of Commons) to go back to their respective constituencies and get themselves re-elected. And this notwithstanding the fact that they had been elected to the House only a few days previously. The requirement was suspended during the world war, and in 1919 the rigor of the rule was softened by a statute which provides that acceptance of a ministerial post within nine months after the issue of the writs for a general election shall not compel the new minister to vacate his seat and secure a re-election.[2] This simplifies matters in the case of a ministry which comes into office soon after a general election, but as respects changes which take place after nine months the old rule still applies. In such cases the prime minister must assure himself that any member of the House of Commons whom he takes into his ministry is able to secure re-election in his own constituency or in some other.

Other considerations which influence the prime minister in making his selections.

In forming his cabinet the prime minister must also have regard for geography. He cannot choose only Englishmen, or Scotchmen, or Welshmen, or Ulstermen. Sentiment and tradition demand that he recognize the various parts of the kingdom. He must strive to make his cabinet as broadly representative as possible—having regard to sectional, social, religious, economic, and also to some purely personal considerations. It is an unwritten law of British politics, moreover, that men who have served in previous ministries of the same political party have a priority of claim if they are still in active political life. Likewise it is understood, quite naturally, that the men who have been the most effective parliamentary critics of an outgoing cabinet are entitled to places in the incoming one.

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[1] 6 Anne, chap. 7.

[2] The Re-election of Ministers Act (9 George V, chap. 2).

Every ministry is to some extent a compromise.

All in all, the process of making a new ministry gives opportunity for the exercise of whatever tactical skill the prime minister possesses. The new prime minister desires to have his party solidly behind him. This may require that a few restless warriors be taken into camp. Every ministry is to some extent a compromise. Never does it represent exactly what the prime minister would do if he had a free hand. Invariably he has more material than he can use; his problem is to cull out that portion of it which can be woven into a fairly well-balanced unit. To use President Lowell's simile, he is like a child trying to construct a figure out of blocks which are too numerous for the purpose and which are not of shapes or sizes to fit perfectly together.

Nor are the prime minister's worries confined to the problem of determining who shall be included in the ministry. The distribution of offices, or portfolios as they are called, must be made carefully. In this connection the prime minister must take into account each minister's personal capacity, his skill as an administrator, and his ability to hold his own in the House of Commons whenever his work is brought under criticism by the Opposition, as it is bound to be. Some heed must also be paid to each minister's own preferences, and especially to the preferences of those who are to occupy the higher positions. In some instances the prime minister's decision is virtually made plain to him by the logic of the situation. To such an extent is this true that the newspapers, even before the process of cabinet-making has begun, are sometimes able to forecast what the prime minister will do in the case of important ministerial posts.[1]

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[1] The prime minister has usually taken for himself the post of first lord of the treasury. This position has no burdensome duties connected with it, hence the prime minister is left free from administrative work. Occasionally, however, the prime minister takes some other portfolio. Mr. Ramsay MacDonald, for example, served during his brief prime ministership as secretary of state for foreign affairs.

Has the monarch any influence upon the selections?

Must the prime minister also take into account the wishes of the monarch? Ministers are ostensibly appointed by the king; but has the king any personal discretion in the matter? Under ordinary circumstances he has none. It is hardly conceivable, at the present time, that the monarch would decline to accept anyone whom the prime minister insists upon recommending to him. But it has not always been so. Queen Victoria, on more than one occasion, criticised a prime minister's selections and is believed to have successfully objected to the inclusion of certain statesmen who were distasteful to her. And in any case something must be allowed for the amenities. A prime minister does not like to begin his work by antagonizing the monarch. He would hardly insist upon including in his ministry anyone to whom the king has a strong aversion, certainly not if he could easily avoid doing it.

What ministers constitute the cabinet.

In selecting a ministry the prime minister also determines how many of his colleagues shall constitute the inner ministerial circle known as the cabinet, for the size of the cabinet is fixed neither by law nor by custom. There are some ministerial posts which invariably carry cabinet rank with them, such posts as those occupied by the chancellor of the exchequer, the lord chancellor, the first lord of the admiralty, the minister of health, the president of the board of trade, and the secretaries of state for foreign affairs, for war, for India, for the colonies, and for the home department. Other portfolios, such as those held by the secretary for Scotland, the secretary of state for air (i.e. military and naval air forces), and the minister of labor are usually included also, while some others such as the first commissioner of works are occasionally included.[1] The remaining ministers are usually left out. In determining the size of his cabinet the prime minister is guided to some extent by precedent, to some extent by the program of legislation that he has in view, and to some extent by his own personal inclinations. A minister may have been given a post of secondary consequence by reason of his desire to be relieved of administrative routine, yet he may be so experienced in counsel that his presence at cabinet meetings is deemed desirable. In that case he may be given a sinecure portfolio, such as that of lord president of the council, or lord privy seal. If these do not suffice it is possible to include in the cabinet some members who have not even titular portfolios, but this practice is less common than it used to be.[1]

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[1] The following ministers constitute the cabinet at the present moment: Prime Minister and First Lord of the Treasury, Lord Privy Seal, Lord President of the Council, Lord Chancellor, Chancellor of the Exchequer, the six principal Secretaries of State, viz: Foreign Affairs, Home Affairs, War, Colonies, India, and Air, First Lord of the Admiralty, President of the Board of Trade, Minister of Health, President of the Board of Education, Minister of Agriculture and Fisheries, Minister of Labor, Secretary for Scotland, Postmaster-General, Chancellor of the Duchy of Lancaster, and First Commissioner of Works.

General functions of the cabinet.

In discussing the work of the British cabinet a distinction should be made between individual and collective functions. Each member of the cabinet is responsible to the crown, to his colleagues, and to parliament for the conduct of some branch of the national administration. These branches of administration correspond, for the most part, to the departments which are headed by members of the President's cabinet in the United States.

The prime minister as *primus inter pares.*

The prime minister, even when he has a sinecure portfolio, is a very busy man. He is supposed to exercise a general supervision over the work of his twenty colleagues. He is the umpire in the case of any differences of opinion among them. When he and one of his ministers find themselves unable to agree, it is the minister and not the premier who resigns. On the other hand the prime minister cannot ride roughshod over his colleagues. He must carry them with him, for they have friends in the House of Commons and dissension in the cabinet would soon spread to the majority in the green chamber. His power is enormous—so long as he remains prime minister. On his advice the royal prerogative lives and acts as powerfully as it did in the days of the Tudors. In theory a prime minister has no right to tell the home secretary or the postmaster-general that this or the other thing must be done. But he can advise the crown to dismiss any minister and select a new one. And he can do this very delicately, by writing as a prime minister once did to Charles James Fox, that "the king has been pleased to issue a new commission for the office of lord high treasurer in which I do not perceive your name."

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[1] All ministers, whether members of the cabinet or not, receive substantial salaries. These range from £2,000 to £10,000 per year, depending upon the importance of the post. The salaries are voted by parliament each year and may be reduced at any time. Some ministers, such as the attorney-general, receive certain fees in addition to their salaries and these fees often total a very large sum. The lord chancellor receives a pension of £5,000 for life, even if he holds the office for a few months only. He continues to serve as a lord of appeal.

The chancellor of the exchequer.

Next to the prime minister the chancellor of the exchequer is the most conspicuous member of the cabinet. His duties include practically all those which pertain to the secretary of the treasury at Washington, and more besides. He has charge of collecting the revenues and of paying out all funds appropriated by parliament. He has various functions connected with the currency and the government's relations with the Bank of England. In addition he prepares the annual budget, lays it before the cabinet, and after having received the approval of this body he personally introduces it in the House of Commons. The chancellor of the exchequer is always a member of the lower chamber because every financial measure including the annual budget must be first debated there. The budget is laid before the House of Commons in a budget speech, which frequently occupies several hours and is one of the outstanding speeches of the session. It is from this speech that the public gets its first information concerning new taxes and other proposed changes in the government's fiscal policy. Hence the chancellor of the exchequer must needs be a clear, ready and fluent speaker, able to hold his own on the floor. This is even more important than a knowledge of public finance, for the chancellor can obtain from his subordinates all the expert advice that he may require in financial technique.

The lord chancellor.

The chancellor of the exchequer should not be confused with the lord chancellor. The lord chancellor of Great Britain occupies a post which has no close analogy in the United States. He presides in the House of Lords and is usually a member of that body. This does not mean that a commoner can never be chosen to the office; any British subject may be chosen by the prime minister and then raised to the peerage. Legally he could preside as lord chancellor without being made a peer. The post of lord chancellor is the highest office in the British judicial system, for its incumbent is the titular head of the Court of Appeal, although in practice he rarely if ever sits there. But he does actually preside at sessions of the law lords when they exercise the judicial functions of the House of Lords. He also recommends to the crown the appointment of judges in the higher courts and himself appoints the justices in the lower tribunals. Naturally the lord chancellor is a lawyer by profession, a barrister as he is called in England, and always a jurist of distinction.

The principal secretaries of state:

It is sometimes said that the British cabinet contains "six principal secretaries of state."[1] That statement is literally correct, but it carries a misleading impression to the American mind. The British cabinet does not contain six secretaries of state in the American sense. It is merely that the term secretary of state forms part of the title in the case of six principal ministers whose functions cover a varied range.

1. Foreign Affairs.

First, there is the secretary of state for foreign affairs. This minister is head of the British foreign office. As such he is the official adviser of the crown in its dealings with foreign powers; he supervises the conduct of all diplomatic relations, negotiates treaties and recommends appointments in the diplomatic service. His duties correspond rather closely to those of the secretary of state at Washington. There is this difference, however: the American state department has certain responsibilities of a non-diplomatic character, such as the custody of the legal archives, which the British foreign office has not. Due to the vastness and complexity of Great Britain's foreign interests the position is one of great importance and is usually filled by a minister of special competence in diplomatic matters; but the British foreign secretary is not, like the American secretary of state, the ranking member of the cabinet. Apart from the prime minister, whose position of headship is unquestioned, there are no formal gradations in membership.

2. War and the Air.

The secretary of state for war occupies a post which exists in all countries, and with substantially similar functions. His department has general supervision over the land forces of the kingdom. The air service is not under his control but is committed to the care of a separate department, established during the world war and since continued under a secretary of state for air. On the other hand, and somewhat curiously, there is no secretary of state for the navy—which has been England's first line of defence. Naval affairs are under the supervision of an admiralty board (the successor to the lord high admiral of bygone days). This board is made up of a first lord of the admiralty, four sea lords, one civil lord, and various secretaries. In the deliberations of this board, however, the influence of the first lord is virtually controlling. Accordingly, to all intents, his position resembles that of the secretary of the navy in the United States.

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[1] The secretaries of state for Foreign Affairs, for the Home Department, for War, for the Colonies, for India, and for Air. The statutes do not specify these titles but refer only to "a secretary of state."

3. The other principal secretaries.

Four other principal secretaries have departments which find no close analogy in the American scheme of national administration. The secretary of state for the home department, or home secretary as he is more commonly called, has to do with many matters of domestic administration, as for example the receiving of petitions for presentation to the crown, the maintenance of peace and order within the kingdom, the enforcement of factory laws, the inspection of local police, and the supervision of prisons. He also advises the crown in the exercise of its pardoning power. The secretary of state for the colonies has charge of the relations between the home government and the governments of the various dominions and colonies. The scope of his work is world-wide, but the functions of the British colonial office are naturally more extensive in matters affecting the crown colonies than in those which concern the self-governing dominions. Since 1922 the relations between Great Britain and the Irish Free State have also been carried on through this office. India is under the supervision of a separate department, the India office, headed by a secretary of state for India whose duties will be explained later. Finally, as has been said, there is a secretary of state for air who has charge of both the military and naval air forces. There is a secretary for Scotland, but he does not rank as a secretary of state. There is no unified department of justice in Great Britain, as in continental countries. The work is divided among three ministers, namely, the lord chancellor, the home secretary, and the attorney-general.[1] The duties of the other ministers, such as the ministers of labor, health, the presidents of the board of education and the board of trade, the minister of agriculture and fisheries, and the lord president of the council, are indicated by the designations of their respective offices, save in the case of the minister of health. His administrative duties are concerned not only with the maintenance of the public health but with the supervision of poor relief and local government. His office took over, in 1919, the functions which had previously been performed by the local government board.[1]

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[1] The attorney-general is assisted by a solicitor-general.

Cabinet meetings.

Regular meetings of the cabinet are held once a week or oftener in normal times, usually on midweek mornings. Special meetings are convened at the call of the prime minister, and when serious emergencies arise they may be held daily. When parliament prorogues it is customary for the cabinet to omit its regular meetings during the parliamentary recess, the members coming together only when needed. The meetings ordinarily take place at the prime minister's official residence, No. 10 Downing Street, or occasionally in the prime minister's room in the House of Commons. An important innovation of post-war days is the frequent holding of committee meetings at which committees of the cabinet deal with special subjects or groups of subjects. These committees, of course, have no final powers. They merely report to the whole cabinet. Special mention should be made of the home affairs committee which deals with government measures before they are submitted to the cabinet. Meetings of this committee are often attended by ministers who are not members of the cabinet.

The secretariat.

Prior to 1916 the cabinet had no secretary and kept no records. The prime minister had a personal secretariat, but it had no direct connection with the cabinet. No member of it attended cabinet meetings. The prime minister merely jotted down some notes of the proceedings and these furnished him with the data from which to make his report to the king. Each member of the cabinet also noted matters relating to his own department. But Mr. Lloyd George thought this method too loose and informal, hence a cabinet secretariat was established with the function of putting business into shape for the cabinet, keeping the records, and having the custody of all official documents. This secretarial establishment was rapidly enlarged until it had more than a hundred employees and its expansion evoked much adverse criticism in parliament. So, when the Bonar Law ministry came into office (1922) the cabinet secretariat was greatly reduced in personnel; but it still remains in existence and has apparently become a permanent part of the governmental machine. Its functions and powers have never been defined, but in general it prepares the agenda for cabinet meetings, gathers data for the cabinet and its committees, keeps the records, and does whatever else the cabinet asks it to do. The head of the secretariat, or his principal assistant secretary, attends cabinet meetings and takes the minutes. In all respects other than in secretarial service the cabinet holds to its traditional informality. It has no rules of procedure. Not even a quorum is needed to do business; the prime minister can act alone if he chooses.

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[1] See *below*, chap. xvi.

Secrecy of cabinet meetings.

No announcement of what has been done at meetings of the cabinet is ever published, and it is accounted a breach of etiquette for members to disclose, either in parliament or out of it, anything that is said at the cabinet table. If there is disagreement among the members, some rumors of it may leak out, but the public does not get the whole story. Most of the cabinet discussions pertain to matters of general policy or to questions which involve the establishment of some important precedent. Routine details which relate to a single department are not usually laid before it. Each minister is supposed to deal with these on his own responsibility or after conference with the prime minister alone. A cabinet discussion is not followed by a vote save in very exceptional instances. If the discussion discloses a marked difference of opinion among the members, the matter is left open until some compromise can be reached, for the action of the cabinet, whatever it is, must be outwardly unanimous. No divided counsel can be tendered to the king, nor can the cabinet go before parliament with a division in its ranks. It must act as a unit. If any member, after a decision has been reached, feels that he cannot support this decision, it is his duty to resign and make way for someone who feels differently. This solidarity is essential to the effectiveness of the cabinet's leadership in parliament.

The cabinet's collective functions.

The collective function of the cabinet is to formulate the policy of the nation on every great question that arises. It is the cabinet that determines how the authority vested in the crown shall be exercised in all matters of nation-wide importance. It also prepares the legislative program for each session of parliament. The various items in this program are then introduced as government measures with the prestige of a unanimous cabinet behind them. Not only this but the measures are advocated, explained, and defended upon the floors of both chambers by members of the cabinet, and the votes of the party majority are summoned to put them through. Not all bills are brought before parliament by the cabinet, of course; but practically all measures of general importance must come up through this channel or they have slight chance of being passed. The cabinet, therefore, is the steering committee of parliament; it provides a recognized and effective leadership.

Its leadership.

This is the most conspicuous difference between the English and the American process of lawmaking. In the United States the cabinet does not have any official responsibility for the preparation of government measures; its members do not sit in either House of Congress and hence cannot direct the debates as the English ministers do. Both plans have some advantages, and some defects also. The arguments are not wholly on one side, as many admirers of the English system have assumed. Ministerial leadership in the House of Commons is, if anything, more despotic than was that of the American speaker before his powers were curtailed.[1]

Ministerial responsibility.

Much has been written about ministerial responsibility as it exists in British government. No principle is more firmly established and none is of more far-reaching importance. It is not a simple principle, easy to understand, for it has a three-fold application.

Its three phases:

1. Responsibility to the king.

First of all, the English ministers are responsible to the king. This is, for the most part, a merely technical responsibility. The king cannot dismiss a member of the cabinet in the way that the President of the United States sometimes does it. An English minister, so long as he possesses the confidence of the premier and the House of Commons, could not be ousted by the king without bringing the whole mechanism of the government to a standstill. The entire cabinet would resign in protest; a majority in the Commons would support its action; a general election would have to be held; and the king would be giving a hostage to fortune. So ministerial responsibility to the king is not a very serious affair. Nevertheless the legal fiction of such responsibility remains.

Second, the members of the cabinet are responsible to one another. This is necessarily so because solidarity is the essence

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[1] On this point see the discussion of "Cabinet Dictatorship" in Sidney and Beatrice Webb's, *Constitution for the Socialist Commonwealth of Great Britain* (London, 1920), pp. 71-74; also G. D. H. Cole, *Labor in the Commonwealth* (London, 1919), pp. 101-104.

2. Responsibility of the ministers to one another.

of the cabinet system. So it is a matter of each for all and all for each. The fault of one minister may bring the wrath of the Commons upon the ministry as a whole. For this reason every minister is constrained, not merely as a matter of prudence but of honor, to seek the opinion of his colleagues before taking any action that might evoke criticism. This principle of intra-cabinet responsibility was definitely established in 1851 when Lord Palmerston, without consulting his colleagues, expressed to the French ambassador his approval of a coup d'état which had taken place in France.[1] For doing this Palmerston was dismissed from the ministry. On the other hand, so long as a member of the cabinet acts only in accordance with a policy which has been approved by the whole body, he has nothing to fear. His colleagues in the cabinet will stand solidly behind him. The whole strength of the majority in the House of Commons will be rallied to his support if any attack is made upon him. To drive him from office would necessitate forcing the whole ministry out. That is a drastic measure for a House of Commons to take, and nothing but a very unusual situation would ever induce such summary action.

3. Responsibility to the House of Commons.

Finally, and most important, the members of the ministry are responsible to the House of Commons. That is what the term ministerial responsibility really means. There is no statutory requirement that a ministry shall go out of office whenever it loses the support and confidence of a majority in the House, but by a custom which has now prevailed for nearly two hundred years it is bound to do so. The ministry must always be able to demonstrate, by vote of a majority in the Commons, that it possesses the confidence of the country. Loss of this confidence means loss of office.

How a ministry can be ousted.

There are various ways in which the House of Commons may show its lack of confidence in the cabinet and may thereby force it to resign. When the financial estimates are under consideration the House may vote to reduce the salary of a minister. Cabinet solidarity then requires his colleagues to defend him against this attack, and the whole body of ministers must stand or fall by the outcome. Or the House may reject some government measure. An amendment to such a measure does not necessarily imply want of confidence unless the cabinet opposes the amendment and makes an issue of it.[1] Amendments brought forward in the House are often accepted by the minister in charge of the bill. Again, the House may undertake to pass 4, some private member's bill which the cabinet opposes, and the issue may be made one of confidence in the government. Finally, 5, if the House is dissatisfied with the cabinet's general policy, without reference to any particular measure, it can at any time pass a resolution declaring its want of confidence. British cabinets, as a matter of fact, have rarely been forced to resign during the past hundred years by reason of an adverse vote in the House of Commons. They have gone out of office, for the 6 most part, as the result of adverse action by the people at the polls. On the other hand the decision to dissolve the House and call a general election has sometimes been necessitated (as in 1924) by a setback in the House.

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[1] See *below*, chap. xx.

The cabinet's right of appeal to the people.

It is always the privilege of the cabinet, when it finds itself faced by defeat in the House, to make an appeal to the people. In other words the prime minister can advise the king to dissolve parliament and order a general election. During the election campaign the ministry continues in office, but if the result of the polling is unfavorable it does not usually wait for parliament to assemble. The practice is for the ministers to hand over their seals of office and make way just as soon as pending business can be cleaned up. This is a matter of a few days, or, at most, a few weeks. Thereupon the king sends for the leader of the victorious party and asks him to go ahead with the forming of a new ministry. This summons, of course, is not unexpected, and the new prime minister may have the organization of a cabinet well lined up in his own mind before it comes.

Coalition cabinets.

Ordinarily the cabinet is made up of members drawn from one political party, but in times of national emergency, when it is desired to have all the parties work together, a coalition cabinet may be formed. When the world war began in 1914 a Liberal ministry headed by Mr. Asquith was in power. A year later, when the immensity of the struggle became recognized, the prime minister suggested that his parliamentary opponents should be represented in the cabinet, and they accepted. A coalition ministry, made up of Liberals, Conservatives and Labor members, was accordingly formed, Mr. Asquith continuing as leader until 1916 when he was replaced as prime minister by Lloyd George. This coalition continued for a time after the war was over, but went to pieces in 1922.[1] Thereupon a general election was held and the Conservatives were successful. But their tenure of power was brief, for they went to the country in 1923 on the issue of inaugurating a protective tariff and were defeated.

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[1] Snap votes and mishaps due to the absence of ministerial supporters do not entail the cabinet's resignation. The cabinet has at all times the privilege of demonstrating, by proposing a resolution of confidence, its control of a majority in the House.

The minority cabinet of 1923-1924.

The general election of 1923 gave a new turn to the cabinet system, for no one of the three parties now controlled a majority in the Commons. The Conservatives had the largest group of members in the House, with the Labor party second, and the Liberals third. Hence the Conservatives were out-voted in the House of Commons when it reassembled and their cabinet was forced to tender its resignation. Then the leader of the Labor party was summoned by the king and proceeded to construct a ministry. For less than a year this Labor ministry carried on, although it did not have a unified majority of the Commons behind it. On appropriation bills, and on other important measures, the Liberals gave it support. But it existed on sufferance and could not carry into effect the pledges that had been made in the Labor party's platform. Finally, in the autumn of 1924, the Liberals withdrew their support on a vital question and thereupon the Labor ministry advised a new election. As a result of this election the Conservatives were returned to power with a majority over the other two parties combined. Thus the old arrangement of a ministry supported by a solid majority was restored.

Ministerial responsibility and the two-party system.

Ministerial responsibility does not postulate a two-party system. It can be maintained, after a fashion, when there are several party groups in the legislative body, as witness the experience of France. But the principle of ministerial responsibility can be much more smoothly operated when there are only two parties, one controlling the government and the other constituting "the opposition." Parliamentary government works best, indeed, when the ministry has a solid, working majority behind it, but not too large a majority. A strong, united, vigorous opposition keeps a ministry on its mettle and makes its responsibility real.

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[1] For some interesting data relating to the coalition cabinet see E. M. Sait and D. P. Barrows, *British Politics in Transition* (1925), chi. ii.

The history of parliamentary government indicates that cabinets which are formed from a single party, and are supported by a single party, do far better work than those which represent coalitions and are supported by blocs. The future of effective ministerial responsibility in England is thus bound up with the question whether the country is going to maintain two strong political parties or more than two.

The evolution of the cabinet system may be followed in J. F. Baldwin, *The King's Council in the Middle Ages* (New York, 1913); A. V. Dicey, *The Privy Council* (London, 1887); and Mary T. Blauvelt, *The Development of Cabinet Government in England* (New York, 1902). Developments during the war are narrated in John A. Fairlie's *British War Administration* (New York, 1919).

The organization, functions, and responsibility of the cabinet are dealt with in all the treatises and text books on English government, for example, Anson's *Law of the Constitution,* (see *above,* p. 12); Lowell's *Government of England,* Vol. I, chaps. ii-iv; Macy's *English Constitution,* chap. vi; Moran' *English Constitution,* chaps. iv-ix; Ogg's *Governments of Europe,* chaps. vi-vii; Marriott's *English Political Institutions,* chaps. iv-v; Low's *Governance of England,* chaps. ii-ix; Courtney's *Working Constitution of the United Kingdom,* chaps. xii-xiii; Bagehot's *English Constitution,* chaps. i, vi, viii-ix; Traill's *Central Government,* chaps. i-ii; Jenks' *Government of the British Empire,* chap. v; Hogan's *Government of the United Kingdom,* chaps. viii-ix, and Wallace's *Government of England,* chaps. xi-xii. The discussions in most of these books cover the same ground. Special mention may be made of a small volume entitled *Whitehall* by C. Delisle Burns (Oxford, 1921) which gives many interesting details about the work of the various ministerial departments.

CHAPTER V

THE CIVIL SERVICE

Of all the existing political traditions in England, the least known to the public and yet one of those most deserving attention, is that which governs the relation between the expert and the layman.—*A. Lawrence Lowell.*

The amateur at the top.

Each department of administration in the British government, as has been said, is headed by a minister, but it is not the business of the minister to do the work of his department. His business is to see that somebody else does it. The ministers are responsible for getting this work done right, and they may be called to account by the House of Commons at any time, but they themselves perform only an insignificant part of it. This is as it should be, for the work is professional and the minister is a layman. Administrative work calls for expert skill and the minister is not an expert. He lays no claim to that qualification. In nine cases out of ten he has no professional qualifications for the headship of the department to which he is assigned. The British war office has been headed at times by a philosopher or a journalist, the admiralty by a merchant or a barrister, and the board of trade by a university professor. One would suppose that in the treasury at least there would be a minister familiar with the intricacies of public finance. But no,—the chancellors of the exchequer have been for the most part lawyers, country squires, or professional politicians. "A youth must pass an examination in arithmetic," says Sir Sidney Low, "before he can hold a second-class clerkship in the treasury; but the chancellor of the exchequer may be a middle-aged man of the world who has forgotten what little he ever learned about figures, and is innocently anxious to know the meaning of 'those little dots' when first confronted with the treasury accounts worked out in decimals."[1]

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[1] Sir Sidney Low, *The Governance of England* (New York, 1917), pp. 201-202.

The qualities that he needs.

This does not mean, however, that members of the British cabinet are men of mediocre attainments. The successful minister, indeed, must be something of a paragon. He must be a man with an open mind. He must have a wide and exact knowledge of public affairs. He must be able to think straight and to express himself clearly, for almost daily he will be called upon to answer questions and make explanations in parliament. Finally, he must be a good administrator, which is another may of saying that he must be able to decide things quickly, firmly, and usually right. He lays down the general principles of policy in his department and his subordinates supply all the technical skill that is needed to carry these principles into operation. The fact that the minister is not an expert operates in some ways as a decided advantage to him in his work. It enables him to reach conclusions with greater freedom from preconceived notions or bureaucratic prejudice.

A different trend is noticeable at Washington.

Englishmen see nothing anomalous in placing laymen at the heads of departments which have administrative problems of a highly technical sort to handle. It is not the English theory of government that a general should be secretary of state for war or an admiral first lord of the admiralty. On the contrary it is deemed particularly desirable that these highly professionalized departments should have civilians at their head. The same opinion is generally held, and the same practice followed, in the United States, but not in all countries of continental Europe. In England the doctrine of amateur ministerial control is extended broadly to all the departments, and that has generally been true of the government at Washington, but in recent years there has been a noticeable tendency to depart from it. In America there is a growing demand that the men whom the President chooses for certain cabinet positions shall have some professional qualifications for the departmental work which they are expected to do. There is an increasing insistence, for example, that the secretary of agriculture shall be a "dirt farmer" and that the secretary of labor shall be someone who is tagged with the union label.[1]

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[1] In the present cabinet of the United States (1925), for example, the secretary of the treasury is a banker; the secretary of agriculture is a former head of an agricultural school; the secretary of labor is a former labor union officer; and the secretary of the navy is a graduate of the United States naval academy.

Rests on a false popular idea.

These popular demands are unfortunate. They betoken a failure to grasp a sound maxim of the science of government which is that the work of experts should be supervised by laymen. When an expert supervises the work of experts there is almost always friction and disagreement, for it is the habit of experts to disagree. It is also their habit to be unfriendly to new and unusual ways of doing things. They like to keep things running in the old ruts. Gladstone once said that he could not remember a single administrative reform which the experts did not oppose when it was first suggested. The idea that the secretary of agriculture ought to be a farmer, moreover, betokens an erroneous idea of what this official is supposed to be and to do. He is not chosen to look out for the interests of the American farmer but for the interests of the American people. The chancellor of the exchequer at Westminster does not represent the bankers of England but the people of England. The chief qualification of a department head, in any country, is that he shall be ready and able to realize the interest of the whole people, not that he shall be professionally competent to promote the interest of any particular class.

The "political" officers.

The English have held firm to this principle. In each department the minister and his highest subordinates are strictly political officers. Responsibility, not expertness, is their earmark. They hold their posts so long, and only so long, as their party remains in power. When a cabinet goes out of office they go with it. All the ministers must have seats in parliament and they owe their tenure to party prominence rather than to any special administrative qualifications that they may possess. They bear to the prime minister a relation not widely different from that which the secretaries and assistant secretaries in the national departments bear to the President of the United States, inasmuch as the political fortunes of each are bound up with those of the whole. The officials who make up the *political* staff of the English administrative departments are known by a variety of titles: ministers, under-secretaries, parliamentary secretaries, financial secretaries, civil lords, junior lords, and what not. The chancellor of the exchequer, for example, has with him in the treasury not only a first lord who is its titular head, but several junior lords, a parliamentary secretary, a patronage secretary (who serves as chief ministerial whip in the House of Commons), and a financial secretary. The secretary of state for foreign affairs has as his chief political coadjutor a parliamentary under-secretary; he has also a permanent under-secretary whose position is not political. These lesser lights are members of the ministry although not members of the cabinet. All of them are political officers, that is, they are laymen who hold non-permanent positions with permanent bodies of expert officials under them. During the world war the number of these political posts was considerable increased but during the past seven years there has been some reduction. The ministers of munitions, shipping, food, national service, information, blockade, and reconstruction have disappeared. There are now fifty-six ministers in all, that is, fifty-six political officials of ministerial rank.

The "permanent" officials.

All the officials of British government except the political officials have a permanent status and tenure. They are chosen for their administrative capacity alone. They cannot be members of either House of Parliament; they must take no part in political campaigns; they do not change when a ministry goes out of office. Public administration is their life work. Numbering in all more than a hundred thousand, and ranging from almost ministerial rank down to "third-class clerks," these officials make up what is known as the British civil service. The outstanding features of the civil service are appointment by competitive examination, promotion on a basis of merit, permanence of tenure, and aloofness from political activities of every kind.[1]

Origin of the British civil service.

The East India Company.

The story of the British civil service ought to have at least a brief narration in every book on the science of government, for it teaches some instructive lessons.[2] The story begins with the tribulations of the British East India Company more than two hundred years ago. This great commercial organization, with its numerous trading posts in the Orient, had to employ large numbers of young men as traders, bookkeepers and clerks. The company paid good wages and, what was more, its employees were able to make money by indulging in private trade on their own account. Some of them made large sums in this way. At any rate the idea of getting to India, earning a good salary there and perhaps a fortune by speculation as well—that idea appealed to many thousands of young Englishmen in the early years of the eighteenth century. Everybody clamored for an appointment, with the result that the applications far exceeded the vacancies. And what happened is what always happens under such circumstances. Influential stockholders and others brought pressure upon the company's higher officers in order to have their own sons or nephews or other young relatives appointed. Incompetents many of them were, but paternal influence was effective in their behalf and hundreds of younger sons hied themselves off to India, ostensibly to serve the company but in reality to shake the pagoda tree for their own benefit.[1]

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[1] There is now, however, a definite agitation, especially among the lower ranks of the civil service, for the right to take an active part in politics.

[2] The best outline of its development is that given by Robert Moses in his *Civil Service of Great Britain* (New York, 1914).

The Haileybury experiment

Here was a spoils system in its most malignant form. The whole service in India soon began to be demoralized. The higher officials of the company sent home a flood of complaints on every ship. In sheer self-defence, therefore, the directors of the company were forced to devise a plan whereby all applicants were required to undergo a period of training before being sent to India. For this purpose a training school was eventually established at Haileybury and there the unfit were weeded out. Haileybury became the only door to appointment and no one was allowed to proceed to India until he had attended for at least four terms and had passed the prescribed examinations. The school, having a great excess of applicants for admission (despite the fact that patronage plus a qualifying examination still determined who should be admitted), was able to raise its standards to a high point; much higher, indeed, than were those of Oxford or Cambridge[2] It soon began to be noticed therefore, that the East India Company was getting more than its rightful share from among the best young brains of the United Kingdom and its extraordinary success in building up a great commercial empire was popularly attributed to these high standards of selection.

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[1] There is a story that Lord Clive, when he managed the company's affairs in India, made it his practice to meet these young fortune-hunters immediately on their arrival. Asking each in turn how much he expected to acquire, Clive promptly paid the newcomer the amount and shipped him back to England.

[2] One eminent scholar, who later became Professor of Sanskrit at Oxford, thus spoke of his own experience at Haileybury: "I soon discovered that if I wished to rise above the level of an ordinary student I should have a task before me to which my previous work at Oxford could only be regarded as child's play."

The change of 1853.

Meanwhile, however, the number of political (as distinct from commercial) posts in India grew with the extension of the company's territorial interests and public opinion in England began to rebel against a monopoly of these appointments by a single training school under the control of a commercial company. In 1853, therefore, parliament abolished the company's right to make these appointments and provided that all subordinate political offices in India should be filled by the crown from an eligible list based on open, competitive examination, with no attendance at any training school required. The school at Haileybury was thereupon closed and the competition thrown open to all British subjects within certain age limits. The adoption of this plan was largely the work of Macaulay, the historian, and it embodied a step of great importance. It paved the way for the entire abolition of patronage in India and led eventually to the reform of the civil service in all the home departments of the British government. From England the civil service movement later made its way to America.

The spoils system is not of American origin.

The spoils system, in other words the practice of bestowing public offices upon the victors as the reward for their work in winning an election, is commonly thought to be of American origin, with Andrew Jackson as its chief progenitor. But the spoils system did not originate in the United States. It is not a native son among American institutions. Long before the spoils system first appeared on this side of the Atlantic it was the custom in Great Britain to look upon appointments to well-paid public offices as the legitimate rewards of partisan service. The spoils of victory were distributed among the personal and political friends of the ministers in Walpole's day, or even earlier. Members of parliament who supported the ministers were allowed to recommend officials in their own constituencies and these "placemen" sometimes bulked so large among the voters of the decayed boroughs that they virtually controlled the elections.[1] Appointments were for no definite term and removals could be made at any time. Whenever a change of ministry took place there were some removals by arbitrary processes in all parts of the kingdom. Andrew Jackson and his friends did not invent the spoils system; they merely transplanted an old-world institution to a new soil. But unlike most transplantations, this one took root and grew luxuriantly in the new environment. It became the most noxious weed in the garden of American politics.

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[1] In one borough, where a count was made, it was found that one hundred and twenty-five out of five hundred voters had obtained appointments through the influence of a single member.

Effects of the spoils system in England.

Great Britain reformed her House of Commons in 1832 but left the civil service unreformed. Patronage continued to dominate appointments in all branches of the government. But in England there was no general clamor for rotation in office (such as arose in the United States), and in spite of the removals which took place when ministries changed, there were thousands of subordinate officials who, having got themselves on the public payroll, remained there to the end of their days. Many of them were indolent and incompetent but their salaries were not high enough to attract the cupidity of the spoilsmen. The heads of departments complained that this combination of patronage in the higher ranks of the service and indolence in the lower ranks was making good administration impossible. Protests from the public also began to rain in upon parliament.

Extension of the merit system from the India service to the home service in England.

So something had to be done. A start was made by establishing a system of qualifying (not competitive) examinations which eliminated the most unfit from among the applicants for appointment. But this did not accomplish much. Meanwhile, as has been said, Macaulay's plan of competitive examinations for the India service went into effect and was being watched with interest. A select committee was appointed to consider the desirability of applying the same plan to the home service; it reported favorably and a start was made in 1855 by the appointment of a civil service commission of three members. This commission was to examine applicants for subordinate positions in all the government departments, the examinations to be in accordance with the wishes of the various department heads. Little by little the powers of the commission were then extended and eventually the principle of open competition was applied to virtually all non-political positions in the national service.

The present system.

Today, therefore, all the permanent officials and employees in the public offices of Great Britain, with a few important exceptions, are chosen under civil service rules. The exceptions include those officials whose work is of highly specialized or confidential nature, such as the permanent under-secretaries, the assistant secretaries, the chiefs of bureaus or branches, and the principal clerks, as they are called. These officials are not selected by competitive examination but in nearly all cases are secured by promoting men from lower positions in the department concerned. Exceptions are also made in the case of employees whose work is of an entirely routine character, requiring no particular qualifications, such as porters and janitors. The examinations for all other positions are conducted under the auspices of a civil service commissioner, and two assistant commissioners, all of whom are appointed by the crown.

Gradations in the service.

The whole civil service, irrespective of departments, is divided into three main grades or classes and a separate examination is provided for each. A candidate does not apply, for example, to be appointed to an upper division clerkship in the foreign office, or the colonial service, or the ministry of health. He takes the general examination prescribed for upper division clerks, and if he stands highest in the results he gets first choice as to the service which he will enter. Those who stand lower down must take such vacancies as remain after the men at the top of the list have been taken care of. It will be noted, accordingly, that the civil service examinations in Great Britain, unlike those commonly held in the United States, have no relation to the particular branch of administration which the applicant hopes to enter. They are distinctly academic in character and cover a wide range of university subjects (languages, history, mathematics, science, philosophy, political science, and so on) from which the applicant is permitted to elect a certain number. The standards are high and the competition for the higher posts is very keen, so much so that it is virtually impossible for anyone not a university graduate to secure a place near the top of the list. These examinations are probably the stiffest that exist in any country. In the case of the intermediate division the examinations are not so difficult and may be passed with credit by those who have had a good secondary school education.[1] But they are severely selective because of the keen competition. In any event the candidates must not be over twenty-four years of age.[2]

The nature of the examinations.

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[1] Some specimen examination papers may be found in Robert Moses, *The Civil Service of Great Britain* (New York, 1914), pp. 290-311.

[2] Candidates for Class I clerkships must be between twenty-two and twenty-four years of age, British subjects, and of good moral character.

There is no provision in Great Britain (as in the United States) for admitting to the civil service examinations men and women of all ages who have failed to make headway in private vocations. The British civil service is a career which one must enter, if at all, at an early age. To win promotion, moreover, every official must show himself to be as well qualified as the best who offer themselves in competition from outside.

A fundamental difference between the English and the American conceptions of a civil service-examination.

President Lowell has rightly emphasized the important difference in fundamentals between the English and American methods of examining candidates for classified positions. In the United States every civil service test is adapted to the particular position that is to be filled. The tests for clerks in the postal service, for example, are quite different from those given to applicants for clerical positions in the state department. It is not general education but special qualifications that the civil service authorities in the United States set out to ascertain. And if the appointee is to spend his entire life in a single position, doing a particular form of work, there is much to be said for the American plan. But if his initial appointment is regarded merely as a starting point from which he expects to rise by promotion, in other words if he is likely to have several different positions to fill during his progress upward,—in that case there is much less to be said for it. Indeed, the outstanding defect of the American plan is that it brings into the public service a great many appointees who are tolerably qualified for a subordinate position but who lack the general capacity to rise. They go in as clerks, and as clerks they serve well enough; but when it comes to picking a bureau chief or assistant secretary from a whole roomful of them, there is frequently not one whose general education and versatility qualifies him to be considered for the higher post.

The American emphasis on the "practical."

Public opinion in America, so far as it relates to civil service examinations, is strongly inclined to emphasize the specific, the concrete, the "practical." We have an idea that the test should be adapted to the job. It would be hard to convince the average congressman that strictly academic tests, such as we use for graduation in colleges and universities, would be the right thing for admission to the public service. Make any such proposal to him and he will think very poorly of your sophistication. Yet it has been demonstrated, over and over again, in all branches of the public service, that men who have been highly and broadly educated do better and rise more rapidly than those whose competence extends to a single line of work. The American system, to sum it up, accepts general mediocrity for the sake of the special qualifications, while the English system disregards the special qualifications and goes out for general intellectual attainment.

As to the superiority of one plan over the other, there may be a legitimate difference of opinion. It should be pointed out, however, that the great business organizations of the United States, when they choose young men for subordinate positions, do not place much stress on special qualifications. They give preference to college graduates who have attained high rank in their studies, who are broadly trained intellectually, who have personality and promise; in a word to those who seem to be of the right material for advancement.[1]

The permanence of tenure in England.

Once appointed to the civil service in Great Britain an official holds office during good behavior, or until he reaches the age of sixty, when he may retire on a pension.[2] There is no danger that he will be removed when a ministry changes. It is an essential of good behavior, however, that he shall abstain from all active participation in politics. He is free to vote but not to serve on an election committee or to canvass for votes. He is forbidden to address political gatherings or otherwise to make any open display of partisanship. But he is permitted and even encouraged to join a national association of public employees and through this organization he is provided with a regular and officially-recognized channel for the presentation of grievances, when grievances arise.[3]

How is it secured?

Now the following question will, no doubt, suggest itself to American readers: What is there to prevent an incoming English ministry from abolishing a large number of positions, thus throwing members of the civil service out of office, and creating new positions exempted from the examinations, for the benefit of the new ministry's own political friends? There are no constitutional barriers to such an action. No court would have authority to reinstate the dismissed officials. But the tradition of permanence has now become so firmly entrenched that no new ministry would dare assail it. Every intelligent Englishman is aware that the continuity of administrative work would be utterly impossible under a system of ministerial responsibility if the non-political staff went in and out with every change of ministry. In the United States the spoils system was able to rise and flourish for a long time because every national administration is bound to stay in office for at least four years. Everybody could count upon holding his job for at least that length of time. But in England a ministry has no minimum tenure. It may take office today and find itself overturned within a few months. Obviously it would never do to make the continuity of administration subject to interruption at any time. And no sensible man would accept a subordinate post in the government service if he knew that he might be ousted within a week, a month, or a year. Permanence of tenure on the part of the administrative staff has been established in Great Britain because no other arrangement would be workable under the system of ministerial responsibility. The same permanence, as will be seen later, has been established in France because changes of ministry are even more frequent there than in Great Britain. If a parliament desires complete freedom to turn a cabinet out of power at any moment, it must make some provision whereby the routine work of administration will be carried on without frequent shocks of interruption.

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[1] In America it is only on rare occasions that a university graduate takes any of the civil service examinations; in Great Britain they do it by the hundreds.

[2] At the option of the official this age limit can usually be extended to sixty-five.

[3] On the application of the "Whitley Councils" plan to the British civil service, see the materials printed in E. M. Sait and D. P. Barrows, *British Politics in Transition* (1925), ch. iii.

The happy combination of lay head and expert subordinate.

Many writers have directed attention to what is really the strongest feature of English government, namely, the coöperation of partisan chief and non-partisan subordinate; of amateur and expert, of layman and professional, of non-permanent and permanent officials. At the head of every department or service there is an officer (usually a member of the ministry) who is responsible to the crown and to parliament, who is avowedly and actively a party leader, who makes no claims to any special skill in his particular field of administration, and whose tenure of office depends absolutely upon the continuance of his own party in power. His function is to serve as the connecting link between the House of Commons, which represents the people, and the members of the civil service who carry on the business of the country. This head of the department or service is at one and the same time an administrator and a legislator. He is the helmsman of his department and determines its course. He is also the chief of a body of experts and is to some extent influenced by their point of view. But he never ceases to be a layman, associated with other laymen in parliament, sharing their sentiments and open to their criticism. He must present to his fellow members of parliament his own views, influenced as they may be by the expert advice of his co-workers in administration; and to his co-workers in the department he must carry the suggestions, criticisms, and instructions of his fellow legislators. Thus he is the shock-absorber between bureaucracy and democracy.

Why we rely so little upon the experts in America.

We often hear it said that the congress of the United States should give greater heed to the opinions and advice of the technical experts in Washington; that in enacting a tariff law, for example, it should defer to the advice of the tariff board, and that in framing railroad legislation it should be guided by the technical skill of the interstate commerce commission. All this is quite true, but the practical difficulty lies in the absence of any provision for close contact between Congress and these administrative bodies. The administrator who is not a member of the legislature sees only one aspect of his problem; the same is true of the legislator who holds no administrative post. Seeing the problem from different angles, they assume diverse attitudes toward it, and since the legislator feels that he has the ultimate responsiblity to the people, he insists that his point of view shall prevail. It is essential, indeed, that the ultimate decision on any question of general policy shall rest with the legislative body. Were the administrative officials to possess the final decision we should not have democratic government. But it is equally essential to the successful working of democratic government that public policies shall not be decided without consulting the administrators whose function it will be to carry out such policies after they have been determined. Otherwise, and in default of this coöperation, a legislative body will do many foolish things. Nothing is easier to make than an unworkable law. Nothing is harder to make than a law which will function exactly as its framers intend.

In England it is possible to do differently.

In England the men who must execute the laws and carry out the policies of the government have a substantial share in the making of both. The permanent officials advise their political chief; but he is free to follow or to disregard their advice as he sees fit. On technical matters he will usually accept it unless he feels that he would be severely criticised in parliament for so doing. The responsibility for making the decision rests with him. If he finds himself perplexed he may consult the prime minister, or in matters of importance he may lay the problem before the whole cabinet for discussion. But whatever his ultimate decision may be, he must stand ready to defend it against all comers. It is an unwritten rule in parliamentary debates that no mention shall be made of a minister's permanent subordinates either by way of praise or of criticism. So far as parliament is concerned these subordinate officials are non-existent. No minister, moreover, ever takes shelter behind the staff of his department. If there be credit for what is done, he takes it. If there be criticism, it falls on his shoulders alone. It may be that the matter in question is one which he had no share in handling, or it may be something of which he had no personal knowledge, having gone through routine channels without ever attracting his attention. He will nevertheless act in parliament as though he were the sole official of his department.

Is the minister controlled by his subordinates?

Parliament, a recent writer has said, is the tool in the hands of the minister, and the minister is a tool in the hands of the permanent officials.[1] This is an exaggerated way of putting it. Some ministers at times have been unduly influenced by their subordinates, but nothing of the sort can fairly be said of most cabinet ministers. Yet even an exaggeration may perform a service by calling attention to a distinctive feature of a government—as this one does. Parliament, under the system of cabinet responsibility, must defer to the advice of its leaders, the ministers. And the ministers, being unable to give personal attention to all the problems of their respective departments, must inevitably be helped by the advice of their professional subordinates. So long as the government of England is conducted by men and not by supermen this must be the case. The work of such departments as the foreign office, the home office, the colonial office, the treasury, not to speak of the versatile ministry of health, involves an enormous amount of detail. Of course these details must be turned over to subordinates. But details lead to precedents, and precedents crystallize into a general policy. Hence a minister cannot adopt the practice of leaving all details to the discretion of his helpers. He must take some and leave others. It is the function of a good administrator to know what should be turned over and what retained. In any event his reliance upon the advice of his permanent staff must be considerable.

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[1] Harold J. Laski, in *The Development of the Civil Service* (London, 1922), p. 22.

Parliamentary "questions" and their relation to this matter

It is sometimes said that the dependence of the ministers upon their permanent subordinates is accentuated by the practice of asking questions on the floor of parliament. As will presently be explained, it is the privilege of any member to put questions on the orders of the day in the House of Commons and to have them answered by the ministers during the hour allotted for this purpose.[1] Now the data for answering these questions, and frequently even the answers themselves, are prepared by the permanent officials. And necessarily so, for if a minister were personally to prepare all the answers which he is required to read in the House he would have time for nothing else. So he takes what is given to him. In this way, it is said, he becomes the mouthpiece of his official subordinates.

But this statement conveys a misleading impression. Look over the list of questions asked from day to day in parliament and you will find that most of them deal with matters of fact. They call for information, data, figures. In such cases, of course, the minister merely reads what has been compiled for him. But some questions relate to matters of policy and when queries of this type are propounded it is the minister, not a subordinate, who determines the gist of the answer. A subordinate official may draft the answer for him at his direction, but such draft will incorporate the minister's own ideas. On matters that really count, therefore, it cannot fairly be said that the minister is the mouthpiece of anybody but himself.

Conclusion.

It is easy to see that the smooth working of this whole system depends upon the existence of mutual confidence between the minister and his permanent staff. If the minister, knowing that his subordinates do not share his own political views, fails to treat them with perfect frankness, or, if, after one party has been long in power, the permanent officials have become so saturated with friendliness to an outgoing government that they do not give the new minister cordial sympathy—then mistakes are certain to be made, the efficiency of the service will suffer, and the plans of the government will miscarry. So the whole civil service ought to feel, and in fact does feel, an obligation of loyalty to whatever ministry is in power for the time being. In that sense the English civil service is a non-partisan body.

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[1] See *below*, pp. 165-168.

The best general work on this subject is Robert Moses, *The Civil Service of Great Britain* (New York, 1914). A much earlier work by Dorman B. Eaton, bearing the same title (New York, 1880), contains some useful material on the early history of civil service reform. A volume of lectures describing various aspects of the system as they exist at the present time was published a few years ago under the title, *The Development of the Civil Service* (London, 1922). A small book by F. G. Heath on *The British Civil Service* (White Plains, N. Y., 1917) is general in scope and not of great value. The best concise account of the system, its history and present workings, is that given in President Lowell's *Government of England*, vol. I, pp. 145-194. The chapter on "Government by Amateurs" in Sir Sidney Low's *Governance of England* (pp. 199-217) is interesting and suggestive. Instructive articles on various phases of the civil service appear from time to time in the *Journal of Public Administration.*

Among public documents relating to the subject mention should be made of the *Fourth Report of the Royal Commission on Civil Service* (1914), portions of which are printed in E. M. Sait and D. P. Barrows' *British Politics in Transition* (1925), ch. iii; the *Report of the Committee appointed by the Lords Commissioners of His Majesty's Treasury* (1917); and the *Final Report of the Treasury Committee on Recruitment of the Civil Service* (1919).

CHAPTER VI

THE HOUSE OF LORDS

> The same reason which induced the Romans to have two consuls makes it desirable that there should be two chambers; that neither of them may be exposed to the corrupting influence of undivided power, even for the space of a single year.—*John Stuart Mill.*

The oldest lawmaking body in the world.

The British parliament consists of two chambers, known as the House of Lords and the House of Commons. The House of Lords is commonly spoken of as "the second chamber"; but historically it is the first, being the oldest legislative body in the world. It has had a continuous existence, with a single brief interruption, for more than ten centuries. In a previous chapter something was said about the origin and early history of the Lords; it grew out of the great council which, in a way, was the successor of the Saxon Witan. Hence the noblemen of England have had the right to be summoned in council or parliament ever since the reign of Alfred the Great, and probably earlier. The House of Lords is also spoken of as "the upper chamber" of parliament, but this does not imply that it is in any sense superior to the House of Commons. On the contrary, the upper chamber is much the lower in point of power and influence.

The peerage.

To understand the composition of the House of Lords it is necessary to know something about the peerage, what it is and what it is not. On this subject of peers and peerages the average American has only the most hazy ideas. He is aware that there is a small element in the British population known as the nobility, and he has noticed that members of the nobility are called by a variety of titles—dukes, earls, viscounts, barons, and so forth. But what these various titles imply he neither knows nor cares. To him the peerage is not an institution but an anachronism.

Yet the student of English government cannot so lightly brush aside those princes and lords who "are but the breath of kings," for both the peerage and the House of Lords have woven themselves deeply into the British political system. The peerage constitutes an important factor in British society; were it to disappear the social hierarchy of the United Kingdom would have to be recast. The House of Lords is an integral part of the British political and judicial systems; its composition and powers must be understood by anyone who desires to know how the laws are made and appeals decided. Thomas Carlyle once said of the Corn Laws that they were too absurd to have a chapter in any of his books, so he omitted them. But he did not thereby contribute much to the enlightenment of his readers on matters of fiscal policy. We would think poorly of an Englishman were he to write a treatise on American government with no mention of Tammany Hall, the spoils system, the eighteenth amendment, the farm bloc, and the gerrymander, merely because he regarded these things with a personal aversion. Political institutions ought to be studied objectively and in proper relation to one another. Their importance is not diminished by ignoring them.

Ranks in the peerage.

The British peerage is a body which contains men and women of varying ranks. It is sometimes said that the princes of the royal family constitute the first and highest gradation in the peerage, but this is not strictly true. The princes, as such, are not members of the peerage at all. But the Prince of Wales is Duke of Cornwall by birth, and this dukedom is the only example of a peerage which can shift to someone other than its holder during the latter's lifetime. The king's second son, Prince George, was created Duke of York a few years ago and as such is a member of the peerage. It is as dukes, therefore, and not as princes that these members of the royal family belong to the peerage of the United Kingdom. As peers of the blood royal, however, they outrank all other peers. So, in reality, there are only five regular gradations in the British nobility—dukes, marquises, earls, viscounts, and barons.

Dukes, marquises, earls, viscounts and barons.

The rank of duke made its first appearance in 1337 when the Black Prince became Duke of Cornwall. Dukedoms have always been given sparingly, and today there are only twenty dukes in the entire peerage. It is the highest rank that can be conferred upon anyone who is not of royal blood. Next come the marquises, of whom there are twenty-eight, the earls who number about one hundred and thirty, the viscounts who form a relatively small element (about seventy), and the barons who are the most numerous element, over four hundred in all.[1] These figures, by the way, do not include members of the Scottish and Irish peerages.

Courtesy titles.

All ranks in the peerage are hereditary. The eldest son of a peer becomes a peer on his father's death; until then he is a commoner, an ordinary citizen, with no special privileges. The younger sons and daughters also pass into the ranks of ordinary citizenship although in many cases they bear courtesy titles.[2] Most of those who constitute the peerage have inherited their rank, but new peers are often created by the crown.

The British peerage is not a caste.

Special emphasis should be given to the point that there is only one peer for each peerage. Save for the one who holds the title all other members of the family are commoners.[3] And save for the one who inherits the title all of them remain commoners. Thus the great majority of those who are born the sons and daughters of peers pass into the ranks of common folk and are assimilated there. This, above all things else, has differentiated the British peerage from continental European institutions of the same general type. In France, before the Revolution, all the children of a nobleman became and remained members of the noblesse. As a result the French nobility became a very large body, with a consequent cheapening of its prestige. Likewise it became a caste, a privileged order, with no overflow into the ranks of the people. Need we wonder that the populace despised and hated it? In England, on the other hand, the peerage has never been a close corporation. Men who are born commoners become peers; men who are born sons of peers become commoners. This fluidity is its greatest source of strength. Any British subject can become a peer by reason of his own merits, if he possesses them. To that extent the peerage is a democratic institution

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[1] The rank of earl goes back to Saxon times, and that of baron to the Norman period. The rank of marquis dates from 1385, and that of viscount from 1442. No new ranks in the peerage have been created, therefore, for nearly 500 years.

[2] These "courtesy" titles add to the outsider's confusion. He reads about the doings of Lord John Russell, Lord Hugh Cecil and others in the House of Commons and wonders why men with such titles are sitting in the lower House. It means that these statesmen are younger sons, commoners, with courtesy titles. But what are courtesy titles? The matter may be explained in this way: The eldest son of a duke, a marquis, or an earl (but not of a viscount or baron) usually makes use of one of his father's subsidiary titles as a courtesy title during his father's lifetime. Nearly every peer in the higher ranks of the peerage has one or more subsidiary titles,—some have nearly a dozen of them. They usually indicate the gradual progress of themselves or their ancestors from the lower to the upper ranks of the peerage. Thus the Duke of Devonshire is also Marquis of Hartington, Earl of Burlington, and Baron Cavendish. His eldest son, accordingly, is by courtesy known as Lord Hartington, but during his father's lifetime he is not a member of the peerage and does not have a seat in the House of Lords. All younger sons of peers are entitled to the prefix "Honorable," and by a well-recognized social usage the younger sons of dukes and marquises are known as "Lord John So-and-So," or "Lord George So-and-So," as the case may be. The same general rules as to courtesy titles apply to the daughters of peers, except that for some mysterious reason the daughters of an earl are known as "Lady Mary So-and-So" or "Lady Gwendolen So-and-So" whereas their brothers have only the prefix "Hon." Perhaps the most familiar courtesy title of the past generation was that borne by Gladstone's colleague, the Marquis of Hartington.

[3] The wife of a peer, however, would not be called a commoner.

Branches of the peerage.

Not all members of the peerage are Lords of Parliament, but only peers of certain designated categories. On the other hand some members who are not hereditary peers have been given seats. Before the union of England and Scotland in 1707 all English peers of whatever rank sat in the House of Lords, and all Scottish peers sat in the Scottish upper House. By the terms of the Union it was provided, however, that while all English peers should continue to have seats at Westminster the peerage of Scotland should be represented by sixteen members only. These sixteen are elected for each parliament by the whole body of Scottish peers, which now numbers less than fifty in all.[1] Eventually the old Scottish peerage will become absorbed, for no additions have been made to it since the union of 1707. The same is true of the old peerage of England. Nearly all additions during this period of more than two hundred years have been to the peerage of Great Britain, or, since 1801, to the peerage of the United Kingdom.

1. The peerage of England.

2. Of Scotland.

3. Of the United Kingdom.

4. The peerage of Ireland.

The Irish peerage at the time of Ireland's union with Great Britain (1801) included 234 members. To have given all these Irish peers the right to sit in the House of Lords was not practicable, so it was provided by the Act of Union that the whole body of Irish peers should select twenty-eight of their members to represent them at Westminster. This selection is not made, as in Scotland, for the duration of a single parliament but for life. The only occasion on which the Irish peers meet to elect a representative is, therefore, when one of the twenty-eight dies or becomes disqualified. It was also provided in the Act of Union that the total membership of the Irish peerage should gradually be reduced to one hundred members, and by 1921 this had been accomplished. The statute which established the Irish Free State made no change in the status of the Irish peerage or its representation in the House of Lords.[1]

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[1] Some of the Scottish peers, however, have titles in the English peerage or in the peerage of the United Kingdom as well. Thus the Duke of Buccleugh sits in the House of Lords as Earl of Doncaster.

Present composition of the House of Lords.

At the present time the House of Lords contains about seven hundred members, of whom more than six hundred are peers of the United Kingdom, while sixteen are representative peers of Scotland and twenty-eight are representative peers of Ireland. But the House of Lords is not composed of hereditary peers alone. Its membership includes, in addition, the two archbishops of the Established Church (York and Canterbury), together with twenty-four bishops. Among these twenty-four the bishops of London, Durham and Winchester are always included; the other twenty-one seats are allotted among the remaining bishops in order of seniority, that is, in the order of their appointment to office. When a bishop retires from his ecclesiastical office he loses his right to a seat in the House.

The lay and spiritual lords.

The law lords.

By statute it has also been provided that six law lords, or lords of appeal, shall be appointed peers for life and have seats in the House of Lords.[2] These lords of appeal are chosen from among the distinguished jurists of the British Empire, and unlike other members of the House of Lords are paid an annual salary. The reason for adding this legal element to the membership is found in the fact that the House of Lords is not only a legislative chamber but a court; in a restricted sense it is Britain's supreme court. And since a body of seven hundred members, most of them with no knowledge of the law, cannot function as a court, it is necessary to have the judicial work of the House performed by men who have had legal training.

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[1] The future of the Irish representative peers, in view of the coming into existence of the Irish Free State, is obscure; and the machinery for electing them is hardly consistent with the "dominion status" which the Free State now enjoys. Not improbably all future vacancies among the twenty-eight representative Irish peers will simply be left unfilled.

[2] The number was fixed at two in 1876, increased to four in 1887, and to six in 1913.

The functions of the House of Lords as a court are performed therefore by the law lords who include not only the six salaried lords of appeal but the lord chancellor, former lord chancellors, and any other lord of parliament who holds or has held a high judicial office. But the law lords do not sit as a committee; their sessions are, technically, sessions of the whole House.[1] In theory any member of the House of Lords is entitled to attend the sessions and to take part in the hearing of appeals; but it need hardly be added that the lay members never do.

How new peers are created.

Peers of any rank may be created by the crown at any time and without any limit as to number.[2] In other words, the creation of new peers is a matter which the prime minister decides. Members of the cabinet may, and do, present names for his consideration. So do others outside the cabinet circle. Some additions to the peerage are made almost every year. During the long reign of Queen Victoria no fewer than 373 new peerages were created, an average of about six per year. On the other hand, some peerages are extinguished from time to time by the death of peers who leave no eligible male heirs. It is not necessary that there shall be sons to inherit the title; in most cases the peerage will pass, in default of sons or grandsons, to brothers or even to cousins. In a few instances women have been made peers in their own right. The rules of succession depend upon the stipulations contained in the royal patent which bestows the peerage. The crown may fix these rules at its discretion, provided, however, that there must be no departure beyond the scope of the general laws relating to the inheritance of real estate; in other words the succession must follow some method of descent already recognized at law. The clauses in the royal patent which cover this matter of succession are known as "limitations in remainder." A peerage cannot be resigned or relinquished. It clings willy-nilly to a man until he dies—unless he manages to get the peerage forfeited by special attainder or act of parliament. A peerage by grant can be declined, but not a peerage by succession.

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[1] As a proof that the sessions of the lords of appeal are sessions of the whole House of Lords, and not merely sessions of a portion of it, one may adduce the fact that now and then bills are introduced and given their first (purely formal) reading at such sessions.

[2] In 1719 an attempt was made to limit the crown in such way that new peerages might only be created as old ones lapsed. This proposal failed to pass parliament.

Who are customarily given rank in the peerage.

The granting of peerages is in part determined by custom, but to a larger extent it depends upon the temper of the cabinet, with the prime minister exercising a controlling voice in the matter. Custom dictates, for example, that the speaker of the House of Commons, on his retirement from office, shall be offered a peerage. The same applies to ministers who have rendered distinguished public service over a considerable term of years.[1] Distinction in fields other than statesmanship also calls for the bestowal of this honor—in the military and naval service, for example.[2] Notable contributions to literature, art, or science are frequently recognized in the same way, as illustrated by the examples of Lord Tennyson, Lord Kelvin, Lord Avebury, and Lord Bryce. And there are not a few who have crept into the ranks of the peerage by reason of large wealth, judiciously used. Munificent gifts to philanthropic enterprises, contributions to the party campaign funds, and other forms of largesse have helped to further the ambitions of prospective peers. Not in so many cases, however, as to give much warrant for Defoe's sour assertion that:

> "Wealth, howsoever got, in England makes
> Lords of mechanics, gentlemen of rakes.
> Antiquity and birth are needless here:
> 'Tis impudence and money makes a peer."

New peerages are usually granted on certain anniversary occasions, the king's birthday or New Year's Day. The lists, when officially announced, occasionally contain some rude surprises. As a rule the honors are worthily bestowed and the action of the cabinet is generally approved by public opinion, although it sometimes happens that an individual name comes in for newspaper criticism. Some years ago it was predicted that when a Labor cabinet came into office there would be an end to the creating of new peerages. But this proved to be a false prediction. Peers were made while the Labor party was in office, although not so plentifully.

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[1] Thus William Pitt, the elder, became Lord Chatham; Benjamin Disraeli went to the House of Lords as Earl of Beaconsfield; Arthur J. Balfour a few years ago was raised to the peerage as Earl Balfour, and Herbert H. Asquith more recently became Earl of Oxford.

[2] Every student of English history will recall numerous examples such as the Duke of Marlborough, the Duke of Wellington, Lord Nelson, the Earl of Camperdown, Lord Wolseley, Lord Kitchener, Earl Haig, Earl Beatty, Viscount Jellicoe, and many others.

Public criticism has been outspoken during the past dozen years in connection with certain elevations to the peerage. In one case a proposed creation was roundly criticised in the House of Lords itself, and the peer-designate is said to have requested that the patent be not issued in his case. At any rate it was not issued. In deference to the general criticism a special committee was appointed, not long ago, to enquire into the whole matter of bestowing these honors and although no new rules were adopted it is now understood that prime ministers will exercise great circumspection in the future.

Knights and baronets.

Knights and baronets are not members of the peerage, although the rank of baronet is hereditary. Knighthoods are bestowed for life only. They are of several categories. A distinction should be made between plain knights, or Knights Bachelor as they are called, and the knights of the various orders of chivalry, such as Knights of the Order of St. Michael and St. George.[1] When plain Matthew Holworthy becomes a plain knight he writes his name Sir Matthew Holworthy, Kt. As a Knight of the Order of St. Michael and St. George he would write it Sir Matthew Holworthy, K.C.M.G. As a baronet he would be Sir Matthew Holworthy, Bart., and his eldest son would inherit the same title.

Men who are already baronets or knights are sometimes promoted to the peerage, but this is not the usual course. As a rule those who are made peers have had no previous title of honor but many of them have held public offices. In the great majority of cases a commoner who becomes a peer must be satisfied with the rank of baron, but occasionally he may be made a viscount, or even an earl, in his initial patent of nobility. To attain this unusual distinction, however, he must have rendered great service to the nation.

Choosing a title.

The recipient of a peerage is permitted, with certain limitations, to choose his new appellation. Very often he takes it from some place with which he has been connected by some bond of established residence or with which he has had some political connection. Thus Sir F. E. Smith, when he became an earl, chose the title Lord Birkenhead because he had been member of the House of Commons for Birkenhead. For the same reason Sir Rufus Isaacs became Lord Reading when he went to the House of Lords. Some retain their family patronymics, as Mr. A. J. Balfour did when he became Earl Balfour. Mr. Asquith, in 1925, managed to combine the name of an ancient city with his own by becoming the Earl of Oxford and Asquith. Provided the title has not been already assumed by some other peer, and provided also that by custom no peer below the rank of earl may take for his title the name of a county or county town, he has a free choice. The new peer's wife usually helps him decide the matter, it is said, and properly so for the wife of a peer, like the wife of a commoner, is saddled with her husband's name. Here is an opportunity to do something that satisfies both halves of the household. A peerage, of course, does not come out of the clear sky, and the future title has usually been discussed and settled in conjugal conclave before it arrives.[1] Women are seldom made peeresses, but women may in some cases inherit peerages and hold the rank in their own right. But they are not entitled to sit in the House of Lords—it was recently so decided, much to the disgust of some of them. A bill conferring the privilege is now before parliament.

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[1] The various orders are indicated by the letters which follow the knight's name, e.g. K.G., Knight of the Order of the Garter; K.C.B., Knight Commander of the Order of the Bath; K.C.S.I., Knight Commander of the Star of India; K.C.V.O., Knight Commander of the Victorian Order; K.B.E., Knight of the British Empire, etc.

The declination of a peerage.

The grant of a peerage may be declined, and declinations have sometimes taken place. Gladstone afforded a conspicuous example. On more than one occasion he was pressed to leave the Commons for the Lords but steadfastly refused, even after he had retired from public life. But his great antagonist, Disraeli, accepted a peerage because his health prevented him from continuing to bear the strain of leadership in the House of Commons. Rank in the peerage carries no salary from the public treasury, and members of the House of Lords receive no remuneration for their services. But most peers are well-to-do and many of them figure prominently among the landowners and captains of industry in England. To maintain the dignity and manner of living customary among members of the peerage requires a considerable income, for even a baron ought to maintain two establishments, one in London and another somewhere in the country.

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[1] Tastes differ as widely in names as in attire. Disraeli, as has been said, chose to be known as Earl of Beaconsfield; Sir Donald Smith became Lord Strathcona; Sir Max Aiken chose the title of Baron Beaverbrook. Ignatius O'Brien, in 1918, decided that Baron Shandon would suit his taste; a little earlier Sir Michael Hicks-Beach became Viscount St. Aldwyn. Kitchener, Haig, and Beatty deemed their old names good enough. When a new title is selected the old family patronymic is retained for the use of the daughters and younger sons. The family name of the Bedfords is Russell; that of the Salisburys is Cecil; that of the Aberdeens is Gordon; that of the Norfolks is Howard, and that of the Devonshires is Cavendish.

Privileges of peers.

Members of the House of Lords have various privileges and are under certain disabilities. Freedom of speech and freedom from arrest while the House is in session extends to the lords as well as to the members of the lower chamber. In addition it is a rule of law, dating back to the Great Charter of 1215, that a peer has a right to be tried by his fellow peers and hence is not amenable to the ordinary courts. If, therefore, a member of the House of Lords insists on his personal privilege when charged with treason or felony, he must be tried by his fellow members. In the opinion of eminent lawyers this right is one which cannot be waived. In the case of misdemeanors, however, a peer may be tried in the ordinary courts. It is only in very rare instances that the House of Lords is called upon to try one of its own members for treason or felony; the last occasion was about a quarter of a century ago.[1]

Peers do not vote at parliamentary elections.

Members of the peerage have no votes at parliamentary elections. Nor, with one exception, are they eligible as candidates for the House of Commons. The exception extends to all Irish peers who are not among the twenty-eight representatives of Ireland in the House of Lords. Any such Irish peer may be elected from an English (but not from an Ulster) constituency. The disqualification from candidacy does not extend in any case to the members of a peer's family, but only to the holder of the title. Even the eldest son of a peer, the heir-apparent to the title, may be elected to the House of Commons during his father's life-time. But on succeeding to the title he vacates his seat in the lower chamber. Sons of peers have figured prominently in the Commons on many notable occasions and in some cases have been its leaders.

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[1] The case of Earl Russell, charged with bigamy (a felony) in 1901. It may be added, by the way, that the distinction in English law between felonies and misdemeanors is a highly illogical one. Misdemeanors are, in some cases, graver crimes than felonies. A curious point may be noted here: If at the time of a trial the House of Lords is in session, the trial takes place before the whole House, presided over by the lord chancellor who is appointed lord high steward *pro hac vice* for the purpose; if the House is not in session the trial is before the court of the lord high steward, which consists of a limited number of selected peers. In the first case the whole House sits in judgment, deciding questions of law and fact alike; in the second case the selected peers are only judges of fact, questions of law being decided by the lord high steward (lord chancellor) as presiding judge.

The House of Lords in session.

The House of Lords meets in its own chamber at Westminster. It is an impressive meeting-place, the most handsome legislative chamber in the world, richly upholstered and dowered with a soft light that filters through the magnificent stained-glass windows. There is an air of leisure and luxury about it. The sessions of the Lords are coincident with those of the Commons. When the Commons is prorogued, the upper chamber is prorogued also; but each House adjourns separately. Sessions of the House of Lords are presided over by the lord chancellor who is appointed by the crown upon the advice of the cabinet. He sits on a large couch or divan known as the Woolsack[1] and puts motions, but he does not have any disciplinary powers.[2] He does not even have the power to recognize peers who desire to speak. When two of them rise simultaneously the House decides, if necessary, whom it will hear. This restriction of the presiding officer's power dates back to the time when the lord chancellor was not a peer but merely an officer of the king's household. Even yet, as has been said, there is no legal requirement that he shall be a peer, although he usually is a member of the peerage or is made one.

Its presiding officer.

The House of Lords meets regularly on Tuesdays, Wednesdays, and Thursdays. Sessions are often held on Mondays also, and more rarely on Fridays. The sittings do not usually last more than an hour or two and as a rule they are slimly attended. Out of the seven hundred members not more than a score usually attend except when matters of some importance are to be discussed. Three members constitute a quorum.[3] In the latter part of the session, however, when bills come up from the Commons the daily sittings last longer and are better attended.

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[1] The term Woolsack originated in the reign of Elizabeth when a statute was passed prohibiting the exportation of wool from England. The judges in the House of Lords, in order to show their approval of the measure and to emphasize the desirability of creating a home market for English-grown wool, had their bench stuffed with it.

[2] "The Lord Chancellor . . . is not to adjourn the House, or do anything else as mouth of the House, without the consent of the Lords first had, except the ordinary thing about bills . . . wherein the Lords may likewise overrule. . . ." *Standing Orders*, xx.

[3] In order to pass any legislative measure, however, at least thirty members must be present.

The proceedings are usually rather dull; few questions are asked; there are no estimates of expenditures to be discussed; and the recommendations of committees are ordinarily accepted with little or no dissent. On the other hand the rules of the House are so liberal that it is possible for any peer to initiate a debate, at almost any time and on any matter of public importance, by "moving for papers," that is, offering a resolution asking that certain official documents be laid before the House. In this way public attention may be drawn to any question and a full discussion may be had in the Lords at a time when the pressure of business in the Commons precludes a long debate there. During such discussions the standards of debate in the Lords are quite up to (or even above) those of the popular chamber, for the House of Peers contains no inconsiderable number of good speakers. And what is more, they are men who speak to the point. Speeches in the House of Lords are not made for the benefit of the press gallery. A peer has no constituents to humor or impress. Politically the House of Lords is one-sided, the Conservatives being in an overwhelming majority. There is never any doubt as to the outcome of a vote when party lines are drawn; but on most questions the House does not divide that way.

Special powers of the House of Lords.

The House of Lords has three special powers which it does not share with the House of Commons. It is a court, as has been said, for the trial of its own members; but this function is now of no great practical importance. In the second place the House of Lords is a supreme court of appeal for the hearing of certain civil and criminal cases, but its judicial work is performed by a very small proportion of its membership, as has been shown.

Impeachments.

Finally, the House of Lords is the body which hears and determines impeachments brought by the House of Commons. This is an ancient prerogative of the Lords; it goes back to the days of the Saxon Witan. Before the development of ministerial responsibility it was a function of great importance inasmuch as it afforded the only means of calling the king's advisers to account. It was through the power of impeachment that parliament managed to acquire its control over the actions of the crown. During many centuries this power was freely used, but it has now dropped into abeyance. One can scarcely conceive of a situation, under the existing parliamentary system, in which it would be necessary to impeach any British official. A vote of the House of Commons requesting his removal from office would be enough, for no ministry could deny such a request and remain in office.[1] And if it should be necessary to penalize any public officer, otherwise than by removal from office, the ordinary courts afford an adequate process.

Legislative functions: Introduction of bills.

Aside from financial measures any public bill may be introduced in the House of Lords. Financial measures must originate in the Commons. As a matter of usage, however, very few legislative proposals except private bills ever get their first reading in the upper chamber. Nine-tenths of them begin their careers in the Commons. The result is that during the early weeks of a session the Lords have almost nothing to do. Then, as the House of Commons gets into its stride, the bills come up in larger numbers than the Lords can readily handle and for a time the peers must work strenuously. It has frequently been proposed that the cabinet should fairly apportion the introduction of government measures to both chambers, thus avoiding idleness at the beginning of a session and congestion at the end; but this suggestion has not found favor. There would be little advantage in setting the Lords to work on important measures until after the attitude of the lower chamber had been determined.

Rejection of bills sent up by the Commons.

The old arrangement.

Until 1911 it was technically the privilege of the Lords to reject any bill, even a money bill. But by usage the upper House had lost its right to amend any financial measure, and in the opinion of many constitutional lawyers it had also lost, by non-user over a long term of years, its right to reject—although the Lords themselves had never conceded this loss. As to bills other than money bills there was never any question, prior to 1911, that the House of Lords might both amend and reject anything sent up by the Commons. The power of rejection was, in fact, used on many momentous occasions during the nineteenth century, notably in the defeat of the first reform bill (1831) and the second Irish home rule bill (1893). In such cases there was no way in which the Commons could make its will prevail against the opposition of the Lords. Theoretically there was one potential method of achieving this end, but it was so drastic as to preclude its use on any save the most critical occasions, and only once was it ever called into use although threats of using it were several times made. The method involved, in the last resort, the creation of enough new peers to swamp the opposition in the Lords. When the upper chamber rejected an important bill which had passed the Commons under the ministry's guidance, the prime minister could make an issue of the matter by advising the dissolution of parliament and the holding of a general election. This would put the matter before the high court of public opinion, the voters of the United Kingdom, for decision. If, at this election, the voters stood by the Commons, it was understood that the Lords would give way, and they usually did. But if they did not surrender the only remaining means of solving the deadlock was to create a sufficient batch of new peers, perhaps a hundred of them or more, and thus to overcome the opposition majority in the House of Lords. This situation, obviously, was one that could not be permanently tolerated.

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[1] This, of course, would not include the judges, who are removable only on an address or resolution of both Houses.

The conflict over the Lloyd George budget.

It was not until 1909 that a deadlock between the Lords and Commons arose in such form and produced such a degree of irritation as to compel the framing of a new procedure. In the autumn of that year Mr. Lloyd George, then chancellor of the exchequer in the Liberal ministry, brought forward a finance bill or budget which proposed the levy of certain new taxes, more particularly some new taxes on land. As these taxes would bear heavily upon the owners of large estates and were also open to some serious practical objections, the House of Lords rejected the measure and also defeated various other bills which had been passed by the Liberal majority in the Commons.[1] The lower House showed its resentment by passing a resolution which declared the action of the Lords to be a breach of the constitution and a usurpation of the privileges of the House of Commons. But the Lords stood their ground and the prime minister had no alternative but to advise an appeal to the voters. Accordingly a general election took place in the early days of 1910. During this campaign the finance bill and the question of "clipping the wings" of the House of Lords formed the chief issues. The Liberals were successful at the polls and having re-passed the finance bill in the Commons, sent it for the second time to the upper chamber, whereupon the Lords accepted the verdict of the country and gave their assent to the measure.

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[1] It was predicted in the Lords that the new taxes would prove unworkable. This prediction proved to be well founded and in the Finance Act of 1920 most of the land taxes were repealed.

The Parliament Act of 1911.

But the Liberals were determined that the relations between the two chambers should be clarified for the future, and a measure for reducing the powers of the Lords was introduced by the ministers into the House of Commons. This measure contained four outstanding provisions. First, it stipulated that money bills, if passed by the House of Commons, should become law one month after such passage, even though the Lords should withhold their concurrence. Second, it set forth a definition of money bills and made provision that in case of disagreement the decision of the speaker of the Commons should be conclusive.[1] Third, it provided that any other public bill passed by the House of Commons in three consecutive sessions, with an interval of at least two years between its first and final passage, should become a law on receiving the assent of the crown notwithstanding the failure of the Lords to approve the measure.[2] Finally, it arranged that the maximum duration of a parliament should henceforth be five years instead of seven. It should be noted, however, that parliament can at any time extend its own lifetime beyond this five year term, if an emergency so requires, and the very parliament which passed the Act of 1911 did this during the world war—prolonging its own existence for nearly eight years and thus giving a good example of parliamentary omnipotence.

(public)

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[1] The definition is as follows: "Any public bill which, in the judgment of the speaker, contains only provisions dealing with all or any of the following subjects: the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts or public money; the raising or guarantee of any loan or the payment thereof, or subordinate matters incidental to those subjects or any of them."

[2] It is stipulated that this provision shall not apply to any measure extending the duration of parliament beyond the present maximum of five years, or to certain other specified measures. The two year interval, to be exact, must elapse between the date of the first occasion on which the bill receives its second reading in the Commons and the date of its final passage for the third time. The House of Commons is authorized to direct in any bill, if it so desires, that the measure shall not become law unless and until it receives the assent of the Lords.

Its acceptance by the Lords.

Under the title of the Parliament Bill, this measure for curbing the power of the upper chamber was passed by the Commons and sent to the Lords. The latter, hardly daring to reject the bill without offering some constructive measure of reform in its place, adopted resolutions embodying an alternative scheme. Meanwhile the measure lay on the table. The ministry thereupon served notice that another general election would be held unless the Lords accepted the bill without amendment and this threat was presently carried into effect. Once more the country stood by the Liberals and thus assured the enactment of the reform measure. Not, however, without a renewed flicker of resistance from the upper chamber which had to be cowed into submission by a threat to create new peers,—as many as might be needed to pass the bill. In the end many of the opposition lords abstained from attendance and the measure passed by a rather narrow margin amid scenes of intense excitement. The Parliament Act of 1911 embodied the most important change that had been made in the constitution of Great Britain for more than three-quarters of a century.

Proposals for the reorganization of the upper chamber.

Proposals to change not alone the powers but the composition of the House of Lords have been made on many occasions, especially during the past half century. The British House of Lords is like the Supreme Court of the United States in that any unpopular action is promptly followed by a clamor for a change in its structure or authority. The rejection of various measures during the eighteen-nineties stirred up a good deal of popular antagonism among the Liberals, but when the Conservatives came forward with a proposal to decrease the hereditary element in the House of Lords by the introduction of life peerages the Liberals did not take kindly to the plan.[1] Again, in 1908-1911, when the Lords came into collision with the Liberal ministry, various other projects of reform were broached. The most notable of these was the Lansdowne plan which contemplated a House of about 330 members, partly of peers and partly of laymen, chosen by a rather complicated process.[2] This was

The Lansdowne plan.

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[1] These life peerages were to be conferred by the crown on persons distinguished in various walks of life.

[2] One hundred peers were to be chosen by the whole body of the peerage, one hundred persons were to be appointed by the crown either from the peerage or outside, one hundred and twenty persons were to be elected by members of the House of Commons sitting in regional groups. Five bishops were to be chosen by the whole body of bishops.

intended as an olive branch to the Liberals in the endeavor to halt the enactment of the Parliament Bill, but it was not accepted. Other proposals were put forward from various sources after the Parliament Bill had become law (1911) and in the end a parliamentary committee or conference under the chairmanship of Lord Bryce was appointed to study them all. It consisted of thirty members drawn in equal numbers from the House of Lords and the House of Commons, and representing all three political parties.

The Bryce plan.

This conference, in 1918, made an admirable report with some definite recommendations[1] It recommended that the upper chamber be reduced in size and that it be constituted of two elements, one-third of the members chosen from the peerage and two-thirds by the House of Commons voting according to regional groups. The term of members was to be twelve years with one-third of the membership chosen quadrennially. In case of disagreement between this second chamber and the House of Commons it was recommended that the matter be referred to a joint conference made up of thirty members from each chamber. This report did not succeed in arousing much public interest, however, and strong opposition developed, particularly against the proposal for settling disagreements by joint conference.

The proposed resolutions of 1922.

Instead of urging these recommendations, therefore, the cabinet appointed a committee of its own members to consider the question and in 1922 five resolutions were submitted to the House of Lords for discussion.[2] But the Lords did not show any

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[1] A summary of the Bryce Report, with a discussion of its merits and defects, may be found in H. B. Lees-Smith, *Second Chambers in Theory and in Practice* (London, 1924), pp. 216-235.

[2] The following were the resolutions:

1. That this House shall be composed, in addition to peers of the blood royal, lords spiritual, and law lords, of: (a) members elected, either directly or indirectly, from the outside; (b) hereditary peers elected by their order, and (c) members nominated by the crown, the numbers in each case to be determined by statute.

2. That, with the exception of peers of the blood royal and the law lords, every other member of the reconstituted and reduced House of Lords shall hold his seat for a term of years to be fixed by statute, but shall be eligible for re-election.

3. That the reconstituted House of Lords shall consist approximately of 350 members.

4. That while the House of Lords shall not amend or reject money bills, the decision as to whether the bill is or is not a money bill, or is partly a money bill and partly not a money bill, shall be referred to a joint standing committee of the two Houses, the decision of which shall be final. That this joint standing committee shall be appointed at the beginning of each

enthusiasm for these proposals and the general plan also met with a rather frigid reception in the country at large. There was a feeling that it would be unwise to do any half-hearted reforming of the hereditary House, especially if that action should contemplate an increase in its powers. There the matter rests. The question of reorganizing the House of Lords is not a live issue at the present moment, but it may become one at any time.

The future of the House.

The composition of the House, accordingly, remains unchanged. It is not regarded as satisfactory even by the Lords themselves; on the other hand it seems impossible to secure any approach to agreement on some new method of constituting an upper chamber. Englishmen, as a rule, prefer to bear the ills they know than to fly to others they know not of. It is not possible to have an upper house constituted like the Senate of the United States or the German Reichsrat because Great Britain is not a federal state. The method used in constituting the French Senate would be practicable in Great Britain, but this body has not been regarded by Englishmen as successful enough to warrant its adoption as a model. Most people agree that an upper chamber in any well-organized government should serve as a check on the lower chamber, that it should provide a safeguard against hasty and ill-considered legislation. For that reason the members of the two chambers ought not to be chosen from the same districts in exactly the same way. On the other hand they ought not to be selected in such widely different ways that the two chambers will reflect irreconcilable points of view and get themselves into continual deadlocks. How to organize the two chambers on a different basis, yet on a basis not too different—that is a problem which Great Britain has not yet been able to solve.

Why not a single chamber?

Why not abolish the upper House altogether and get along with a single chamber? The members of the Bryce Conference were unanimous in their belief that such action would be unwise. They agreed that there are at least four distinct and essential

new parliament, and shall be composed of seven members of each House of Parliament, in addition to the Speaker of the House of Commons who shall be ex-officio chairman of the committee.

5. That the provisions of the Parliament Act, 1911, by which bills can be passed into law without the consent of the House of Lords during the course of a single parliament, shall not apply to any bill which alters or amends the constitution of the House of Lords as set out in these resolutions, or which in any way changes the powers of the House of Lords as laid down in the Parliament Act and modified by these resolutions.

functions that cannot be well performed save by a second chamber. These four functions are as follows:

1. The examination and revision of bills brought from the House of Commons, a function which has become more needed since, on many occasions during the last thirty years, the House of Commons has been obliged to act under special rules limiting debate.

2. The initiation of bills dealing with subjects of a practically non-controversial character which may have an easier passage through the House of Commons if they have been fully discussed and put into a well-considered shape before being submitted to it.

3. The interposition of so much delay (and no more) in the passing of a bill into law as may be needed to enable the opinion of the nation to be adequately expressed upon it. This would be specially needed as regards bills which affect the fundamentals of the constitution or introduce new principles of legislation, or which raise issues whereon the opinion of the country may appear to be almost equally divided.

4. Full and free discussion of large and important questions, such as those of foreign policy, at moments when the House of Commons may happen to be so much occupied that it cannot find sufficient time for them. Such discussions may often be all the more useful if conducted in an assembly whose debates and divisions do not involve the fate of the executive government.

Nobody and everybody.

Englishmen are in the habit of saying that the House of Lords represents Nobody while the House of Commons represents Everybody. That is one reason why the two chambers manage to get along without persistent disagreement. Everybody and Nobody find it hard to quarrel. But if the House of Lords were "reformed" and given a representative character the situation would be different. Then it would represent Somebody. Like the American Senate it would attempt to take a co-ordinate share in legislation. The commoners would no longer have supremacy; they would merely be part of a system of checks and balances. Naturally the House of Commons does not desire reform of that sort. It does not desire to build up a competitor of its own kind. "I don't want to say a word against brains," says one of the characters in *Iolanthe*, "but with a House of Lords composed exclusively of people of intellect, what's to become of the House of Commons?" That, indeed, is the nub of the whole matter.

A strength that arises from weakness.

So the strength of the House of Lords, paradoxical as it may sound, arises from its weakness. By becoming weaker the House of Lords has grown strong. At best it can now delay legislation; it can no longer thwart the will of the popular

House. Shorn of its power to balk the Commons, the motive for reforming the Lords has to some extent lost its force. It is an anomaly, of course, that so small a body as the British peerage should bulk so large in the affairs of a great nation, but no American need cross the Atlantic in order to find anomalies in an upper chamber. That one duke should have the equivalent of a thousand votes cast by plain citizens is an absurdity, to be sure, but it is just as absurd that Nevada, with a population of eighty thousand should have the same representation in the Senate as New York with ten million. Someone may retort, of course, that this is because it is so stipulated in the constitution of the United States, to which an Englishman will reply that the hereditary structure of the House of Lords has been embedded in the constitution of Great Britain for ten times as long a period.

Let us not become perturbed when we find anomalies in the structure of any government. The true test of an upper chamber is not what it is but what it does. We may well pocket the offence which it gives to our current conceptions of democracy if it successfully performs those highly important functions which we desire an upper chamber to perform.

General utility of the House of Lords.

The essential functions which a second chamber ought to perform have already been stated. To what extent does the existing House of Lords perform them satisfactorily? On the whole it appears to be doing the work fairly well. It examines and revises non-financial measures. It insists, when the occasion arises, that ample time be given for a full public discussion of such bills before they become part of the law of the land. It compels sober second thought and gives opportunity for passions to subside. It says, now and then, to the House of Commons: "The opinion of the country seems to be about equally divided on this matter. Suppose you hold up the bill until the minds of the people have become clarified." On the other hand the House of Lords has not shown itself disposed, during recent years, to go clearly beyond its province and obstruct the passage of measures which the country is obviously in a mood to accept. It has accepted the diminution of its powers with tolerably good grace and shows no resentment. Its members no longer feel impatient because great questions of public policy are being finally settled by the House of Commons alone.

Or, as they used to sing it in one of Gilbert and Sullivan's frivolities:

"And while the House of Peers withholds
Its legislative hand,
The noble statesmen do not itch
To interfere with matters which
They cannot understand."

Its procedure.

The procedure followed by the House of Lords in considering the various measures which come before it is different from that of the Commons. In the Lords there are no standing committees for public bills. All bills, after two formal readings, are debated in Committee of the Whole House before being read a third time. Debates in the House of Lords, when they take place, cannot be shut off by using the closure. If amendments are adopted in the upper House, the measure goes back to the Commons for concurrence. Then the Commons either agrees to the amendments, or insists on its own way, or some compromise is reached by an informal conference. Failing this, the bill is deemed to have been rejected and the Commons must then decide whether the measure is of sufficient importance to warrant its repassage in accordance with the procedure laid down by the Parliament Act.

Personnel of the upper chamber.

There is a common impression that the House of Lords, being composed for the most part of men who have inherited their titles, is inferior to the House of Commons in the quality of its membership. Taking the entire personnel of the two chambers and striking an average, this impression may be correct, but if one were to select, let us say, the fifty ablest members of the Lords and set them alongside an equal number of the best drawn from the Commons, the Lords would not suffer by the comparison. The upper House contains in its ranks some of the foremost statesmen, jurists, theologians, scholars, bankers and industrial magnates of the kingdom. Many of its members have been trained by long years of service in the Commons, in the diplomatic corps, in India, or in the colonies. These are the men who do the business of the House. Undoubtedly there are numerous peers who possess neither ability, interest, nor experience in public affairs; but most of these peers take little or no part in the proceedings. In spite of the dead weight which they place upon the House there is certainly as much real ability around the woolsack at Westminster as you will find on the front benches of upper chambers in other countries.

Is there any other upper House which has included among its members during the past twenty-five years an abler array than is represented by Salisbury, Lansdowne, Grey, Balfour, Asquith, Reading, Kelvin, Bryce, Playfair, Lister, Cromer, Milner, Curzon, Haldane, Kitchener, Rothschild, and Northcliffe? Some of these, it is true, did not take much part in the debates, for they were not politicians in any sense of the term. But the mere presence of these names on the roll of the House would at least seem to indicate that the red chamber is not without its quota of brains and versatility. A few years ago a visitor to the galleries might have observed, sitting on the benches not far apart, the three pro-consuls, Curzon, Cromer, and Milner. One had been governor-general of India; one was the maker of modern Egypt; the third had been governor-general of South Africa. Can anyone doubt that a discussion of colonial problems, participated in by these men, would be worth listening to? It is not without reason that the House of Lords has sometimes been called "the Westminster Abbey of living celebrities."

The House of Lords is unrepresentative in the usual sense of the term, but it is not wholly unrepresentative of the best in British national life. There are a good many peers with third-rate intellects, but the saving grace of the situation is that most of them stay away from Westminster. There are also some men with heads of adamant in the Senate of the United States,—but unhappily they do not have the grace to stay away.

The most convenient source of information concerning the early development of the upper chamber in Great Britain is Luke O. Pike's *Constitutional History of the House of Lords* (London, 1894), and the same author's *Political History of the House of Lords* (London, 1901). Holland and May's *Constitutional History of England* (new edition, 3 vols., London, 1912), contains much that is interesting on the later period. The clashes between Lords and Commons during the past hundred years are described in G. Lowes Dickinson's *Development of Parliament during the Nineteenth Century* (London, 1895), and in J. H. Morgan, *The House of Lords and the Constitution* (London, 1910). A volume by Adrian Wartner on *The Lords: their History and Powers,* *with Special Reference to Money Bills* (London, 1910) is useful on the particular phase of the subject with which it deals.

On matters relating to the legal status of the peerage the standard work is F. B. Palmer, *Peerage Law in England* (London, 1907). Mention should also be made of Erskine May's *Treatise on the Law, Privileges and Usages of Parliament* (12th edition, London, 1917). Burke's *Peerage of Great Britain* gives detailed information concerning all holders of titles.

Brief discussions of the House of Lords, its composition, powers and influence, may be found in Anson's *Law of the Constitution,* Vol. I, chap. v; Lowell's *Government of England,* Vol. I, chaps. xxi and xxia; Marriott's *English Political Institutions,* chaps. vi-vii; Low's *Governance of England,* chap. xii; Courtney's *Working Constitution of the United Kingdom,* chap. xi; Moran's *English Government,* chap. x; Wallace's *Government of England,* chaps. viii-ix; Ilbert's *Parliament,* chap. ix; Macy's *English Constitution,* chap. iv; Hogan's *Government of the United Kingdom,* chap. iv; and Ogg's *Governments of Europe,* chap. ix.

The various proposals to reform the House of Lords are dealt with in W. S. McKechnie, *The Reform of the House of Lords* (Glasgow, 1909); W L. Wilson, *The Case for the House of Lords* (London, 1910); and the *Report of the Conference on the Reform of the Second Chamber* (1918), commonly known as the Bryce Report.

Discussions concerning the purpose and value of an upper house may be found in Sir J. A. R. Marriott's *Second Chambers* (Oxford, 1910); H. B. Lees-Smith's *Second Chambers in Theory and Practice* (London, 1923); and H. W. V. Temperley's *Senates and Upper Chambers* (London, 1910). The chapter on this subject in J. S. Mill's *Representative Government* is still worth reading although it was written many years ago.

CHAPTER VII

THE SUFFRAGE IN GREAT BRITAIN

Igitur communitas regni consulator, et quid universitas sentiat sciatur.[1]—*Thirteenth Century Political Ballad.*

The long story of the suffrage.

In the second book of the *Iliad*, when the steadfast Ulysses sought to influence the actions of his followers, he addressed his "winged words" to their leaders. He did not argue with the rank and file. It would have been a waste of his rhetoric to do so. But the modern statesman does not confine his preachments to the leaders of the people; he goes directly to the people themselves and endeavors to mould the public mind by appeals to reason, emotion, or prejudice as the occasion may require. By the development of universal suffrage the will of the people has become the supreme law in all civilized lands.

A history of the suffrage would be a history of political science, indeed a history of civilization. If it takes two stout volumes to explain how a part of the world has voted,[2] it would require a dozen to describe how the whole world has voted at all epochs in its history. From the time when the children of Israel refused to obey the voice of Samuel and shouted with one voice, "Nay, but we will have a king over us,"[3] to the constitutional referenda of the twentieth century there is material for a long story, much too long for narration in these busy days.

But if anybody with an antiquarian turn of mind desires to study the evolution of the suffrage from primitive times to the present, no country would afford him a more admirable field for this purpose than Great Britain. Men have been voting in that kingdom, under a variety of conditions and restrictions, for more than a thousand years. There has been no break in this continuity, even during epochs of civil war and revolution. Representative institutions passed out of existence in the great countries of the Continent during the seventeenth and eighteenth centuries but in Britain they hung on, albeit at times by a rather precarious grip. There has never been a single year, from the time of Alfred the Great to our own day, in which Englishmen did not elect somebody to represent them somewhere—in township mote or county court or borough council or House of Commons. A thousand years ought to make any habit inveterate!

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[1] "Let the king consult his realm, give it equal dealing,
Listen to the common voice, catch the public feeling."

[2] Charles Seymour and Donald P. Frary, *How the World Votes* (2 vols., Springfield, Mass., 1918).

[3] I Samuel, viii, 19.

The suffrage in Saxon England.

In Saxon times the right to a voice in determining the affairs of the kingdom was restricted to the magnates of the realm. The Witan contained no elective members. Those who came were present in response to an individual summons from the king. In the local councils, however (the township and shire motes), the free man who was not of noble rank obtained recognition. He attended the one in person and was represented in the other by a "reeve and four good men" of his own choice. In that sense manhood suffrage existed in England from earliest days. The absence of popular representation in the Witan was due to no theory that the ordinary freeman could not safely be trusted with a share in national government. It arose from practical considerations. The Witan met wherever the king happened to be. It would have been an utter impossibility, with conditions of travel as they were, to have brought together a representation of the freemen from all the shires. The nobleman who went to the Witan often took weeks to make the trip and he travelled with a bodyguard of retainers because the roads were so unsafe. The trip must have involved him in heavy expense. Nor is it certain that the authority of the Saxon king was sufficiently strong to have imposed the principle of elective representation upon the whole realm even if he had set out to do so. No one looked upon representation as a right in those days. It was an onerous imposition to be avoided if possible. So, if any king of Saxon England had set out to compel his people to be represented in the Witan, he would probably have had a rebellion on his hands.

Suffrage under the Normans.

The coming of the Normans altered many features of English government but left the system of representation substantially unchanged. The Norman Concilium, like the Saxon Witan, was composed of earls, barons, bishops and abbots; of great men only, each of whom came in response to the royal summons and not because he was elected to come. In the township and county courts (or councils), on the other hand, the Saxon practice of personal attendance and of representation on the part of all the freemen was continued. But it was seriously impaired, so far as the township was concerned, by the growth of feudalism which converted many of the old Saxon townships into manors and manorial boroughs. William the Conqueror rewarded his followers by giving them large estates which often comprised several townships. In such cases the township mote became a manorial court, presided over by the lord's bailiff. In the manorial boroughs, likewise, the authority of the lord replaced that of the freemen. And it was not until the boroughs began to obtain their charters in the twelfth and thirteenth centuries that the freemen once more obtained control of town government.

The beginnings of popular suffrage.

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Mention has already been made of the fact that knights of the shire, chosen by the representatives of the freeholders in the county court, were summoned to the Great Council at various times during the thirteenth century and that these county representatives became in time a regular element in parliament. It will also be recalled that the boroughs were summoned to send representatives to parliament and that these borough representatives combined with the knights of the shires to form the House of Commons. The knights were chosen at the meetings of the county court by the common assent of all the freeholders of the county; the borough representatives were elected by all the burgesses or freemen of the borough. British parliamentary suffrage began, therefore, on a basis that was at least democratic in theory, with no precise distinction between the qualifications for voting in counties and boroughs. This was not the result of a revolution in 1215 or at any other date. The Great Charter may have been revolutionary in some of its provisions but it extended the suffrage to nobody who did not have it before. The right of the freeman to have a voice in the election of his local rulers far antedated the victory of the barons over John Lackland. It was, in theory at least, the earliest basis of English local government.

The reaction against it.

But the suffrage did not forever remain democratic, even in theory. In the reign of Henry VI (1429) provision was made that no one should vote in the counties except those who held freehold land with a rental value of at least forty shillings per year. This was a sweeping disfranchisement inasmuch as many freehold estates, perhaps the majority of them, had a rental value of less than forty shillings. The "forty shilling freeholder," however, determined the election of members of the House of Commons in the counties of England from that date to the passage of the Great Reform Act in 1832. Meanwhile the suffrage in the boroughs was also narrowed, although not as the result of any special enactment. The theory that every freeman had a right to vote remained in existence, but the definition of a freeman became steadily less comprehensive. In some boroughs the list of freemen was confined to those who held land under certain forms of tenure, or who paid certain forms of local taxation. In others it was whittled down to gild-members or members of certain industrial organizations. In some boroughs, indeed, men could only acquire "the freedom of the town" by being born the son of a freeman, or by marrying a freeman's daughter, or by paying a fee into the borough treasury. In very few boroughs were the requirements exactly alike; each borough developed its own rules, precedents and practice. But in general, during the interval between the fifteenth and the nineteenth centuries, the borough suffrage everywhere grew more restricted; this development being assisted by the king who desired to control the House of Commons and found that boroughs with few voters could be more easily controlled than those which had a large electorate.

Mediæval elections in England.

Now it may seem to be a matter for surprise that the masses of the people, both in country and town, should have permitted the franchise to be withheld from them. But let it be reiterated that nobody, during those centuries, looked upon representation in parliament as a right worth struggling for. No salaries were paid to members of parliament from the national treasury; each county or borough had to defray the cost of its own representation and this was often considerable. Hence the election usually went to anyone who could be induced to serve without pay and defray his own expenses into the bargain. Sometimes there was great difficulty in getting anybody to accept this dubious honor. The sheriff rode up to the meeting of the county court and read to the assembled company a writ from the king commanding that a "worthy and discreet knight of the shire" be sent to a parliament at Westminster, or York, or Oxford as the case might be. Thereupon the crowd of freeholders, perhaps on the suggestion of the sheriff, would shout for somebody whom they regarded as able to stand the expense and thus elect him "by acclamation." Not infrequently, if the acclaimed knight were present, he would dig spurs into his horse and hurriedly depart the gathering in a frantic and usually unsuccessful endeavor to evade being thus drafted for service. Other knights and freeholders would pursue and bring him back.

Sometimes the sheriff, on reaching the county court, would find that all the eligibles had disappeared. That mattered little, for he could report to the king the name of somebody who had not been voted for at all. It was the sheriff's job to procure a member from his shire; if the freeholders were willing to help him it merely simplified his task. Under these circumstances, why should anybody feel aggrieved at being deprived of the suffrage? ✓ If was only when the House of Commons became the dominant branch of the government that men sought election to it. Then and not till then did the people of the counties and the towns begin to look upon the parliamentary suffrage as a privilege rather than a burden. Much oratory has been spilled in declamations about the way "our Anglo-Saxon forefathers fought for the right to vote," but the sober prose of it is that nobody thought the right to vote worth fighting for until a couple of hundred years ago.

The English suffrage prior to 1832.

During the years prior to 1832 the English suffrage requirements had become chaotic. In the counties every forty-shilling-freeholder was entitled to vote, but what constituted a freeholder? There were many different forms of freehold tenure. In the boroughs there was also the greatest diversity. In some towns the right to vote had been granted to nearly all the adult male inhabitants; in others not one per cent of the population were voters. In some boroughs the suffrage included all "pot-wallopers," that is, all adult males who had possession of any premises in which food could be cooked. So it often happened that when a man's house burned down he left the chimney standing and on the eve of an election might be seen kindling a fire in it as evidence of his political qualification. In others none but members of the municipal corporation could vote. Membership in this corporation might be obtained by birth, by marriage, by purchase, by grant,—in a dozen different ways. Every borough was a law unto itself. Whether a man could vote in parliamentary elections depended upon where he lived.

Inequality of the constituencies.

Representation in the House of Commons, moreover, was not adjusted to population; every county and every borough, whatever its size, had two members. Under these conditions it is a mere figure of speech to say that the House of Commons, prior to the great reform of 1832, represented the people of Great Britain. The total population of the United Kingdom in 1831 was about fourteen millions, of whom about three millions would have been entitled to vote under a system of manhood suffrage. As a matter of fact the number of those who actually possessed the suffrage was less than a million at the most, and probably a good deal less. Yet such was the situation when Blackstone wrote his great eulogy of a government "so wisely contrived and so highly finished," and praised it as a system of lawmaking by "gentlemen of the kingdom delegated by their country to parliament."[1]

The consequent inequality of representation.

The government of England, prior to 1832, was representative in theory alone. Not only was the suffrage narrow and lacking in uniformity but for nearly two hundred years no change in the apportionment of representation had taken place. During this interval the population of some boroughs and counties had stood still or had diminished, while that of others had greatly increased. The Industrial Revolution wrought great changes in the demography of England; a few of the older boroughs dwindled until they had almost no inhabitants at all, while the newer factory towns such as Manchester, Birmingham, Leeds, and Sheffield were crowded with tens of thousands. Yet the depopulated boroughs kept sending members to parliament while the new centers of population in some instances had no representation there. This discrimination was not the result of a sinister design on anybody's part; it was merely the product of new economic conditions. Nevertheless when proposals were made to reapportion the seats, all the vested interests of England were mobilized in opposition to any change.

The rotten boroughs and pocket boroughs.

The "rotten boroughs" and "pocket boroughs" of eighteenth century England were illustrations of what the whirligig of time can do to political institutions if it is let alone. Old Sarum was the most absurd among these blighted constituencies, a flourish-ing borough in the Middle Ages which drifted into the nineteenth century without a single house inhabited. It had only seven freemen, all of them non-residents, and these seven chose two members of parliament from among themselves. The borough of Corfe Castle was also an abandoned settlement; on the eve of the great reform it consisted of a ruined manor-house and a few dilapidated outbuildings, without a single resident. But the owners of this property likewise elected a brace of members to the House of Commons. The borough of Downton did not belie its name, for it was entirely under water, the sea having swept over it and made it an uninhabitable salt-marsh; but it did not lose its representation in parliament. Malmsbury had thirteen voters, no one of whom could read or write. They voted by a show of hands. The Scottish constituency of Bute had one lone resident voter. On election day he regularly appeared at the polling place, called the roll of the freeholders, answered to his own name, moved and seconded his own nomination, put the question to the vote, and was unanimously elected a member of parliament.

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[1] See the panegyric which concludes Book iv of the *Commentaries*.

The patrons and their patronage.

These decayed boroughs readily fell a prey to large landowners and speculators who bought them for the sole purpose of controlling the representation. In this way a speculator sometimes managed to get a half-dozen seats into his clutches. He thus became the patron of the boroughs and the seats became his "patronage" to bestow as he saw fit. Hence the origin of this term which has passed into the political terminology of all English-speaking peoples. Often the patron had an eye to profit and put up the seats for sale to the highest bidder. This was not done *sub rosa*, but by open advertisement in the newspapers. There was a great demand for these seats, especially among the "nabobs" as they were called, men who had returned from India after making their fortunes.[1] By spirited bidding they ran the prices up to a high figure and sometimes as much as three thousand pounds had to be paid for the privilege of writing M. P. after a bourgeois name. The House of Commons, as "the best club in London," afforded an opportunity for social advancement. Lord Chesterfield in his famous letters to his son (1767) expressed disgust that even noble lords were profiteering in the sale of their pocket boroughs. Still, some very able men got their start in politics by the favor of patrons. William Pitt entered the House of Commons as member-designate for a pocket borough; so did Charles James Fox.

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[1] See also *below*, chap. xviii.

Unrepresentative character of parliament in the eighteenth century.

It should not be imagined, of course, that the majority of the commoners, prior to 1832, were chosen in this way. But the proportion was sufficiently large to give a few patrons the balance of power and it enabled them for many years to block every project of reform. They would consent neither to a widening of the suffrage nor to a redistribution of seats. And naturally so, for any such reform would have deprived them of marketable property. Their grip on the House was also strengthened by the fact that secret ballots were not used at the elections; the freemen were required to do their voting orally. This, of course, made it easy for landowners and employers to coerce their tenants and workers. The tenant who voted wrong would have his rent raised; the employee who did not do as he was told on election day would lose his job. Sometimes the entire tenantry was lined up and marched to the poll.

In counties and boroughs where the electorate was too large to be thus controlled by a patron, there was a great deal of open bribery. Freemen would hold off until they were paid to vote. The polling extended over a week or more and in a close election the price went a little higher each day. In the last hours of the polling it sometimes rose to twenty or thirty pounds per vote. A burgess who sold his vote at the top of the market had no need to work for a living during the rest of the year. "The House of Commons," said Pitt, "is not representative of the people of Great Britain; it is representative of nominal boroughs, of ruined and exterminated towns, of noble families, of wealthy individuals, and of foreign potentates." This, by the way, was the House of Commons which passed the Stamp Act, placed the taxes on tea, attempted to coerce the colonies, and provoked the American Revolution.

The movement for a wider suffrage.

The movement for a reform of the suffrage and for a redistribution of seats began as early as 1775, but for many years it made slow progress. The excesses of the French Revolution gave it a setback. Then, for a dozen years, Europe was convulsed by the great conflict with Napoleon, and it was not until after the Corsican had been safely caged at St. Helena that the people of Great Britain could give due thought to their own domestic problems. The close of the Napoleonic War was immediately followed, moreover, by a wave of conservatism or reaction in Britain. England had been largely responsible for Napoleon's overthrow at Waterloo, and England's strength seemed to be due to the excellence of her political institutions. At least Englishmen believed this to be the case. They proclaimed their system of government to be the best in the world, and many who were not Englishmen believed it. That is why the French, after the fall of Napoleon, attempted to model their government on that of England—with ministerial responsibility, a House of Peers, a House of Commons, trial by jury, and writs of habeas corpus. The ten years following 1815 were not favorable for the launching of political reforms. England was wrestling with some difficult economic problems (much like those of the years since 1918); she was tired of continental turmoils, anxious to live in tranquillity within her own sea-girt bounds, and disinclined to do anything rash. Reform had to await a change in the national temper.

The eve of the Reform Act.

Great wars are usually followed by conservative reactions. But they also give rise to problems of economic and social reconstruction which cannot be solved by reactionaries. England had now become an industrialized country with millions of people huddled together in the rapidly-growing factory towns, yet the Tories clung to the old policy of no change and noninterference. The government should keep its hands off, they argued, and leave the economic problems of the nation to be solved by individual initiative, free competition, and the law of demand and supply. How often has the world listened to this counsel of reaction! Hence there was no town planning, no provision for water supply or sanitation, no serious attempt to prevent overcrowding in the houses occupied by the workers. The hours of labor were long and the conditions intolerable. Women and children in large numbers were set to work under conditions which menaced the future of the race. Social and economic reformers cried out in protest against the existing conditions, but to little purpose. There was a clamor for laws in the interest of the factory worker, for a readjustment of the tax burdens which the wars had imposed, and for an improvement in the conditions of urban life. But the unreformed House of Commons made no response. So it gradually dawned upon the people that no program of social or economic betterment could be put into effect until parliament had itself been reconstructed. Political reform, in other words, must come first.

The obstacles in the way.

Political reform, however, was slow in coming, for the obstacles were great. Peers and patrons were in the way. The inherent conservatism of the middle-class Englishman, his fondness for old traditions, was hard to overcome. So the movement for political reform did not make much progress until 1830 when, by a fortunate combination of circumstances, a Whig ministry came into power. The next year a reform bill was introduced. The House of Lords rejected this bill and the Commons re-passed it. A bitter conflict then ensued between the two chambers and the issue was for a time in doubt. In many other countries the impasse would have led to a civil war. But ultimately the Lords gave way and the Great Reform Act of 1832 went on the statute book. A revolution in the spirit of English government was accomplished without the firing of a shot.

Provisions of the Great Reform Act: 1. Redistribution of seats.

The Act of 1832, perhaps the most important statute ever passed by parliament, dealt first of all with the redistribution of parliamentary seats. It did not provide for a general redistricting, nor did it adjust representation to the number of voters in each district, but it cleared away the most glaring inequalities. The rotten boroughs and pocket boroughs were for the most part obliterated from the list of constituencies. Some of the smaller boroughs were consolidated while others had their representation reduced from two members to one. In this way nearly one hundred and fifty seats were gained for distribution among the more populous new towns and counties. The principle of representation according to population, or "Rep. by Pop." as it was colloquially termed, did not get any recognition at this time, but the Act of 1832 at least gave some representation to every populous community.

2. Widening of the suffrage.

In the second place the Act of 1832 reformed the suffrage. Parliament might have taken this opportunity to make the suffrage uniform in both counties and boroughs, but did not do so. The old distinction between county and borough suffrage was retained. In the counties the franchise was extended to include not only the forty-shilling-freeholders but tenants of lands having certain higher rental values. In the boroughs a uniform suffrage was substituted for the old diversity of requirements, by enfranchising all "rate-paying occupants who were assessed on a rental value of ten pounds or more per annum." To make this provision clear it is necessary to explain that in Great Britain the local taxes, or rates, are ordinarily levied upon the *occupant* of a house, factory, workshop, office, store, garage, or other building—not upon the *owner*, as in America. Such local taxes or rates, moreover, are levied upon the assessed *rental value* (in other words, what the place rents for), and not upon the assessed *sale value* of the property as in America. The borough suffrage of 1832 was intended to include, therefore, any occupant of any premises having an assessed rental value of a dollar a week or thereabouts. But it did not extend the suffrage to lodgers, or occupants of rooms, because lodgers were not separately assessed. It is estimated that the Act of 1832 added about half a million voters to the lists, which was an increase of perhaps a hundred per cent.

The Second Reform Act, 1867.

While this measure quieted public clamor for the moment, it did not bring the reform movement to an end. It left the United Kingdom a long way from manhood suffrage. The constituencies were still uneven; the secret ballot had not yet come into use; elections continued to extend over several days; and electoral corruption was still prevalent. Groups of militant reformers known as Chartists kept up a spectacular campaign for a new charter of liberties which would embody a grant of manhood suffrage, equal constituencies, the secret ballot, and other democratic reforms. Chartism did not succeed in bringing about the fulfillment of its program, but it undoubtedly influenced the drift of public sentiment which eventually became strong enough to compel a further democratization of the suffrage. Strangely enough, the Conservatives were the ones who started the Second Reform Act of 1867, a measure introduced by the Disraeli cabinet. They dished the Liberals by going beyond what the latter had proposed.

This act provided for a further redistribution of seats by taking members from the smaller constituencies and giving them to the larger ones. It also extended the suffrage in both counties and boroughs, more particularly by including all "ten pound lodgers" in the borough lists.[1] Although the Act of 1867 did not grant manhood suffrage by any means, it enrolled nearly a million additional voters on the electoral lists, or twice as many as had been admitted by the Great Reform Act of thirty-five years before.

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[1] That is, lodgers paying at least ten pounds a year as rental for their lodgings. The act also abolished the ten pound limit for *occupants*.

From 1867 to 1885.

Much tinkering with the electoral laws took place during the next two decades, but no comprehensive measures like those of 1832 and 1867 were forthcoming. Reform, for the moment, concerned itself with the remedying of specific defects in the electoral system. The secret ballot was brought into use (1872); elections were confined in each constituency to a single day, and a drastic law for the suppression of corrupt practices was enacted (1883). Numerous amendments to the Act of 1867 were made, for example, in 1884, by adding new voters to the lists while retaining intact the old theory of the suffrage as a privilege depending upon the occupancy of property. Another important change embodied in an act of 1884 was one which extended the suffrage in the counties by including all county residents who would be qualified under the borough requirements.

From 1885 to 1918.

From 1885 to the close of the world war there were no alterations in the rules relating to the English suffrage. Voting continued to be related, in some way or other, to the ownership or occupancy of property. But since owners, occupants, and lodgers constituted the great majority of the adult male population, the English electorate was measurably near to being on a manhood suffrage basis. On the other hand the requirement that every voter should be an owner, a tenant, or a lodger, operated to disfranchise a good many unskilled laborers, as well as sailors and other persons whose occupations required them to move about frequently from place to place. During the war, for example, Great Britain sent several million soldiers to France, while great numbers of civilians left their regular places of abode to work in munition plants. Although public sentiment was unanimous in its desire to let these voters retain their electoral rights, it was found impossible to do this under the existing laws because there was no provision for absentee voting.

The movement for woman suffrage had also become vigorous in Great Britain before 1914, and during the war it gained popularity by reason of the way in which thousands of British women went to work in munition factories, thus releasing large numbers of men for active military service. So it became clear that some further widening of the suffrage must take place and as a general election was impending it seemed desirable that this be arranged at once. On the other hand it had been agreed that no controversial question of government should be settled during the war except by the general consent of all concerned. Accordingly the problem was referred to a large conference representing all the political parties and presided over by the speaker of the House of Commons. This conference agreed on the main principles of a measure which virtually established universal suffrage in parliamentary elections and thus abandoned the time-honored alliance between enfranchisement and property.

The Act of 1918.

Its chief provisions:

This statute, which passed parliament without difficulty, is known as the Representation of the People Act.[1] While primarily a measure for widening the suffrage it provided also for a slight increase in the size of the House of Commons and for a rearrangement of the constituencies. The membership of the House had stood for many years at 670, which made it second only to the House of Lords as the largest legislative chamber in any country. Nevertheless it was now increased to 707, the additional seats being distributed to those parts of the kingdom in which the population had most rapidly increased.[2]

1. Abolished the old distinction between county and borough suffrage.

The old distinction between county and borough constituencies was retained, but the suffrage qualifications were now (for the first time) made absolutely uniform in both. Hence the distinction between county constituencies and borough constituencies is no longer of any practical importance. A borough member is one who represents a large town or city; a county member is one who represents a group of smaller towns, villages, and rural districts. But both are chosen at the same time, in the same way, and by the same suffrage. Each county and borough member represents approximately the same number of people. The present quota is about 70,000. In the United States the quota for each congressional district is about 250,000. Hence a congressman represents on the average more than three times as many people as a member of parliament.

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[1] 8 George V, c. 64-65. A supplementary statute, known as the Representation of the People Act, No. 2 (10 & 11 George V, c. 35), was passed in 1920. It will be noted that the English practice is to designate acts of parliament by titles which give a clue to their contents. Thus, the Housing of the Working Classes Act, the Defence of the Realm Act, the Government of Ireland Act, the Government of India Act, and so on. To the student of political history this has an obvious advantage over the American plan of tagging measures with the names of congressmen. Such designations as the Sherman Act, the Adamson Law, the Volstead Act, the Esch-Cummins Law, the Mann Act, etc., convey no intimation as to what the law deals with.

[2] By the creation of the Irish Free State, however, the size of the House was later reduced to 615.

2. Gave voting rights to all adult male citizens.

The main provisions of the Act of 1918, however, did not relate to seats but to suffrage. The franchise was widened to include both men and women, but on a somewhat different basis. Great Britain does not yet have equal suffrage as we understand it in America. One rule applies to men, another to women. As for the men, every male British subject twenty-one years of age and over, who has lived in any constituency or in an adjoining constituency for at least six months prior to the compilation of the voters' lists, is entitled to be enrolled as a voter. Or, if he occupies an office, shop, or any other business premises in the constituency, he may be enrolled as a voter though he is not an actual resident.[1] Prior to 1918 a man who occupied property in several constituencies could vote in each of them, and as the elections were not held in all the constituencies on a single day he could travel around from one place to another in time to cast his ballot in each. Thus it sometimes happened that a man who had an office in London, a summer cottage in Brighton, a shooting lodge in Scotland, and a country house in Surrey could qualify as a voter on each of these premises and cast several ballots at a general election. This is no longer possible. No one, under any circumstances, may now vote in more than two constituencies. If he be an *occupant* in one constituency and a *resident* in another, he may vote in both.[2] In addition, all adult male British subjects who hold degrees from certain universities are entitled to cast their ballots for the election of university members as well as to vote in the constituencies where they reside; but in that case they may not also claim qualification as occupants of business property. So the principle of "one man, one vote," is not yet established in Great Britain. The great majority of Englishmen have a vote in one constituency only—a vote based upon citizenship, age, and residence. But many thousands have a vote in a second constituency—a vote based upon the occupancy of business property or the possession of a university degree or its equivalent. As a special concession to the thousands of youths under twenty-one years of age who were serving with the colors when the Act was passed, it was provided that the age requirement in their case should be nineteen years only; but this provision has now been rendered obsolete by the efflux of time.

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[1] The premises must have a rental value of at least ten pounds per annum that is, a little more than four dollars per month.

[2] A *resident* is one who actually lives in a place; an *occupant* does not live on the premises—as in the case of an office or factory.

3. Gave voting rights to women under certain restrictions.

The question of woman suffrage gave the framers of the Act a great deal of difficulty. Logic seemed to dictate that if women were admitted to the suffrage at all, they should be admitted on equal terms with men. But even logic has to reckon with the realities, and there was the awkward fact that Great Britain had suffered a serious reduction in man-power by reason of the war. If the two sexes were placed on an equality, therefore, the women would considerably outnumber the men on the voting lists. Even those who favored woman suffrage in principle were not sure that the creation of a preponderantly feminine electorate would be a wise action to take at a time when the nation was still in the throes of a struggle for existence. Bear in mind that this problem came before parliament in February, 1918, when the outcome of the war was still very much in doubt. At any rate a compromise was reached by which women were given the franchise under such limitations as would ensure a preponderance of male voters. This involved the establishment of a twofold restriction, first that women should not be eligible to vote until the age of thirty, and second, that they must either be occupants of property or wives of occupants.[1] A woman over thirty years of age who is a business occupant in one constituency and resides in another may vote in both, as in the case of a male voter. Most of the British universities (not including Oxford) grant degrees to women, and women who have received degrees from such institutions are entitled to vote for university members. In the case of universities which do not grant degrees to women, a woman is nevertheless entitled to be enrolled as a voter if she has fulfilled the requirements for a degree.

In some respects the Act of 1918 was more radical in its provisions than was the Great Reform Act of eighty-six years

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[1] The property occupied must either be a dwelling house of any rental value or some other premises worth at least five pounds per annum in rental value, but this figure is so low that it shuts out nobody.

The suffrage in Great Britain and the United States compared.

earlier. It doubled the size of the British electorate, raising it from eight to sixteen million voters. As the total population of Great Britain and Ireland was less than forty-eight millions in 1918 this meant that one person in every three was made a voter. This is a slightly higher ratio than in the United States where an age limit of twenty-one is fixed for both men and women. The reason is partly to be found in the fact that the same Englishman may be a voter in two constituencies and thus get himself counted twice, but it is also due in part to the large number of unnaturalized aliens, both male and female, who figure in the American population although not eligible as voters.

The action of parliament in withholding the suffrage from women until they are thirty years of age has been ridiculed by some ardent American suffragists as a self-evident absurdity. But it is no more ridiculous than a certain compromise provision which the Fathers of the Republic inserted in the constitution of the United States; namely, the one which provided in effect that a black man should be counted as three-fifths of a white man in determining the quota of congressmen from each state.[1] In both cases it was a condition and not a theory that had to be dealt with. Nobody expects, moreover, that the thirty-year limitation will be permanently maintained in Great Britain. In due course the male population will recover from its war losses and the numerical equality of the two sexes will be substantially restored.[2] Then the reason for the age discrimination against women voters will have disappeared. It is not improbable, indeed, that a reduction of the age limit will be made before the proportion of the sexes is restored.

Difference between national and municipal suffrage.

In the United States the same suffrage requirements are established for national, state and municipal elections; but in Great Britain this is not the case. The requirements for voting at parliamentary elections vary somewhat from those used in municipal elections. For national elections the principal qualification is residence; for municipal elections it is the occupancy of property. At municipal elections, in other words, no one is eligible to vote unless he (or she) is an occupant of some premises. Unmarried women and widows who fulfil this requirement are eligible to vote at the age of twenty-one; married women at the age of thirty. Hence it is that a man (or woman) may be a parliamentary voter but not a municipal voter, or vice versa. The same lists are used in the two classes of elections, but the qualifications are indicated by a distinctive mark after each name.

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[1] "Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons." Art. I, Sec. II, par. 3.

[2] Statisticians have found that for some years after a great war the number of male children born in an exhausted country exceeds the number of female children.

Disqualifications.

There are certain disqualifications which render both men and women ineligible to be enrolled as voters at parliamentary elections. The list of disqualifications is sometimes facetiously stated to include "criminals, idiots, aliens, paupers, and peers." Criminals and idiots, while confined in public institutions, are not permitted to vote. Nor may anyone be enrolled unless he is a British subject by birth or naturalization. The term British subject, however, includes everyone who owes allegiance to the king and is not restricted to the inhabitants of the British Islands. It includes Canadians, Australians, South Africans, East Indians, as well as Englishmen, Irishmen, Scotsmen and Welshmen. Members of the peerage are excluded from voting at parliamentary elections because they are adequately represented in the House of Lords; but in municipal elections this exclusion does not apply. The right to vote at all elections, both parliamentary and municipal, was formerly withheld from paupers, that is, from those who are supported by the public poor-relief funds; but this disqualification was abolished by the Act of 1918.[1] Voters may also be disfranchised by the courts on conviction for certain corrupt practices at elections.

In Great Britain the growth of democracy, as indicated by the ratio of voters to population, has been steady and strong. Prior to 1832 it is estimated that not more than one adult male citizen in fifty was a voter. From 1832 to 1867 the ratio was about one in twenty-five; after 1867 it became one in twelve; and after 1884 one in seven. Today it is about one in three. Here we have, therefore, a good example of the slow but steady march of democracy, the widening of the electorate by a series of easy stages extending over almost a full century.

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[1] But paupers who are maintained in public institutions do not get their names on the list because they are not deemed to have satisfied the residence requirement.

The best history of the English parliamentary suffrage prior to 1832 is that given in the two volumes on *The Unreformed House of Commons,* by Edward and Annie G. Porritt (Cambridge, England, 1909). A good account of the conditions which prevailed in England on the eve of the great reform is contained in Charles Seymour's *Electoral Reform in England and Wales* (New Haven, 1915). Mention should also be made of G. S. Veitch, *The Genesis of Parliamentary Reform* (London, 1913); G. M. Trevelyan, *Earl Grey and the Reform Bill* (London, 1920), and J. R. M. Butler, *The Passing of the Great Reform Bill* (New York, 1914). The further extensions of the suffrage in 1866-1867 are discussed in Homersham Cox's *Reform Bills in 1866 and 1867* (London, 1868). A full discussion of the Act in 1918 may be found in G. P. W. Terry, *The Representation of the People Act, 1918* (London, 1919), A. O. Hobbs and F. J. Ogden, *The Representation of the People Act* (London, 1918) and J. L. Seeger, *Parliamentary Elections under the Reform Act of 1918* (London, 1918). For a concise survey of the parliamentary suffrage prior to the recent changes, the reader may best be referred to the chapter on "Constituencies and Voters" in Lowell's *Government of England,* and for a compact summary of these changes to the new edition of Anson's *Law of the Constitution,* Vol. I, pp. 105-132. The question of woman suffrage in England is discussed in W. L. Blease, *The Emancipation of English Women* (new edition, London, 1913), and Emmeline Pankhurst, *My Own Story* (New York, 1914).

CHAPTER VIII

NOMINATIONS AND ELECTIONS

> Representative institutions will probably perish by ceasing to be representative. . . . A tendency to democracy does not mean a tendency to parliamentary government or even toward greater liberty.—*W. E. H. Lecky.*

The ordinary constituencies.

Members of the House of Commons are the only persons connected with the central government of England who are chosen by popular vote. All others owe their positions to inheritance or appointment. The United Kingdom is divided into parliamentary districts or constituencies, and for the most part each constituency elects one member. There are, however, some two-member constituencies.[1] The present House of Commons contains 615 members, distributed as follows: England and Wales, 528; Scotland, 74; Northern Ireland (Ulster), 13. Each member of the British House of Commons (with the exception of the university members) represents on the average about 70,000 people or about 23,000 voters; each member of the French Chamber of Deputies represents about the same number. According to the constitution of the United States there must be a redistricting after each decennial census; in Great Britain there is no such requirement either by law or by custom. Parliament rearranges the constituencies at irregular intervals; the last general redistricting prior to 1918 was made in 1885, thus leaving a period of thirty-three years between reapportionments.

How they are mapped out.

It is of interest to note the way in which this redistricting is done. In 1918, for example, the first step was to appoint a Redistribution Commission composed of persons in whose integrity and independence the House of Commons had confidence. This commission was directed to prepare a plan for the redistribution of seats, but the principles which they were to follow were laid down by the House in resolutions. These resolutions had been virtually agreed upon by all parties. The commission held local inquiries all over the country and thereafter embodied their recommendations in a report. Then these recommendations were embodied in a bill, placed before parliament, and passed in the usual way with no substantial changes. This procedure might seem to give opportunity for gerrymandering, but the English tradition of fair play is heavily against anything of the kind and there has been virtually none of it. All the constituencies, so far as is practicable, follow historical boundaries; they include a single borough, or two contiguous boroughs, or a part of a large borough, or what is left of a county after the boroughs have been taken out. They are never constructed by piecing together parts of different boroughs or different counties. When a county or a borough is parcelled into two or more constituencies these are known by names, not by numbers as in the United States. Thus a member of parliament represents the West Derby division of Liverpool, or the Darwen division of Lancashire, whereas a member of Congress sits for the tenth Massachusetts district, or the eighth Illinois congressional district.

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[1] Sixteen of them in all.

The university constituencies.

Not all the seats in the House of Commons, however, are allotted to boroughs and counties. The older British universities have for many years been entitled to representation in the House of Commons, and fifteen seats were allotted to all the universities by the Act of 1918. This represented a slight increase over their previous quota. By the withdrawal of the Irish Free State the number of university members has been reduced to twelve. Two members are allotted to Oxford and two to Cambridge, one to the University of London, three to the four Scottish universities (Edinburgh, Glasgow, Aberdeen, and St. Andrews), one to the University of Wales, two to the English provincial universities (Manchester, Birmingham, Durham, etc.) and one to Queen's College, Belfast. The voters' lists in these university constituencies include all British subjects who hold degrees or have satisfied the requirements for a degree.[1]

How university members are elected.

The list of university voters is prepared by the governing body of the university which is entitled to charge each voter a registration fee but rarely does so. When a university constituency is entitled to more than one member, as in the case of the Scottish universities, the election is determined according to the principles of proportional representation, thus giving the minority a chance to be represented. It is not necessary that the voters shall come to the university on election day and vote in person. They are allowed to send their ballots by mail to the polling officer.

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[1] The age requirement is twenty-one years in the case of men and thirty years in the case of women. Holders of honorary degrees are not included.

A comment on the system.

The practice of according representation to the universities has existed in Great Britain since the reign of James I. Its origin was connected with the king's attempt to control the Commons, but the universities soon ceased to elect the royal nominees and sent men of sterling independence to parliament. University representation thus became a fixture. Although it involves a departure from certain fundamental principles in parliamentary representation and may sound undemocratic there has been no popular outcry against it and in 1918 the number of university members was somewhat increased.[1] The fact that it involves a political discrimination in favor of the educated classes does not seem to rankle in the minds of the English people. The universities choose men of conspicuous ability and often of liberal views. They are not strongholds of toryism. The Labor party has a large number of university graduates in its ranks and among its leaders. But what would Americans think of a proposal to give the universities special representation in Congress? That is not a troublesome question to answer: most of them would think it too absurd for a moment's discussion. The proposal runs counter to the egalitarian fetich, and that is enough.

The duration of a parliament.

In Great Britain a general election must nominally be held at least once in every five years, but parliament is supreme in its power to prolong its own life when it decides to do so.[2] It did so during the war years 1914-1918, thereby affording a fine illustration of the way in which the British constitution can be adapted to the needs of the hour. The Congress of the United States, no matter what the emergency, cannot prolong its own life for a single day.[3] Whether in war or peace, there must be a congressional election every second year. British elections do in fact come oftener than once in five years; sometimes two have taken place in one, or three in successive years, as in 1910 and in 1922-1923-1924. For the crown may dissolve parliament and call for a general election at any time. The prime minister, in consultation with his cabinet, is the one who decides upon a dissolution and sets the election date. At times his hand may be forced by the opposition in parliament, but more often he either lets parliament run its term, or, with a close eye on the drift of public sentiment, he may decide to advise a dissolution and a general election when the chances of victory look roseate—as Lloyd George did immediately after the armistice. Naturally the members of the House do not like the idea of a new election until their statutory term has practically expired, for it means expense to them and the risk of defeat also. But the prime minister is the generalissimo, and it is he who decides, with the help of his cabinet, whether good strategy dictates an appeal to the country. Having made up their minds, the ministers can keep the decision secret until their own campaign plans are in readiness. On a few rare occasions they have been able to "spring an election" upon their opponents, catching the latter unawares. But the opposition has learned that it pays to be vigilant and prepared at all times. Nowadays it is seldom caught napping. Still the privilege of choosing the time for an appeal to the country gives the ministerial forces a distinct advantage.

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[1] The Franchise Bill which was brought in by the Asquith ministry in 1912, but later withdrawn, contained a provision abolishing university representation. This proposal evoked a great deal of opposition, even from unexpected quarters.

[2] But it should be noted that a measure to prolong the life of a parliament is outside the scope of the Parliament Act, and hence cannot in any circumstances be passed without the assent of the Lords.

[3] Occasionally, however, it manages to prolong its life for an hour or so. This is done by instructing the sergeant-at-arms to stop the clock when the hands approach midnight on March 3.

Fixing an election date.

So nobody can predict just when the next election will come. But after a parliament has been in existence for two or three years the political pot begins to simmer. A rumor that parliament is going to be dissolved usually finds some believers until it is officially denied. Presently another rumor gets afoot and spreads more widely. The newspapers begin to announce "from an authoritative source," or "on trustworthy information" that a dissolution of parliament is being considered by the ministry. In the end, after various false alarms, an official announcement settles the matter by giving the exact dates for the nomination and the polling. The interval between this announcement and the date for the nominations is usually brief, sometimes only two or three weeks. That being the case, the political parties do not delay the selection of their candidates until the date of the election is known. They have them in readiness long before the announcement comes.

The methods by which the parties choose their candidates are

How nominations are made.

not alike in all the constituencies, and in any event these methods can be best explained in connection with a survey of party organization and activities a little later. The official nomination procedure is very simple. All that a candidate need do, in order to get his name on the ballot, is to file a nomination paper signed by ten qualified voters of the constituency. This document he hands to the "returning officer" on the day designated for the making of nominations. The returning officers are named ex officio; in a borough the mayor always serves, and in a county the sheriff. When a constituency spreads over more than one borough or county the home secretary designates which mayor or sheriff is to act. In the university constituencies the vice-chancellor or some similar academic official serves as the returning officer.

On the day set for making nominations the returning officer attends at the town hall or court house or other convenient place and the nomination papers are handed to him by the candidates or their agents. One hour is allowed for this purpose; then the nominations are closed. Although only ten names are required on nomination papers it is customary for the candidates to gather a much larger number, sometimes several hundred. This is done by way of advertising the candidate's popularity. With his nomination paper each candidate must also place in the hands of the returning officer a deposit of one hundred and fifty pounds sterling. This requirement of a deposit is intended to discourage frivolous or hopeless candidacies. If the candidate receives more than one-eighth of the total vote on election day his deposit is returned to him; otherwise it is forfeited and turned into the national treasury. Great Britain is the only country which requires a candidate to deposit a sum of money in order to have his name printed on the ballot.

The deposit.

Simplicity of the plan.

Apart from this requirement the most distinctive feature of the British nomination system is its simplicity. There are no primaries as in the United States. So far as the official requirements are concerned, anybody can have his name submitted to the voters if he is willing to risk a few hundred dollars. Getting ten signatures is no trick in a constituency of twenty thousand voters. But the deposit is another matter and serves as an effective deterrent to numerous candidacies. At any rate it is very rarely that more than three candidates appear in any single-member constituency, and until a dozen years ago there were not often more than two. Sometimes only one candidate is nominated and when the time for filing papers has expired he is declared elected unopposed.

Qualifications of candidates.

For many centuries no one could be nominated for election to the House of Commons unless he possessed a property qualification. This requirement is now abolished. Any British subject who is qualified to be a voter may stand for election in any constituency. It is not necessary, either by law or by usage, that he be a resident of the constituency which he seeks to represent. Non-resident candidacies are common, although perhaps not so common as they used to be. In Great Britain, as in every other country, the voter naturally prefers one of his own neighbors to a stranger, provided other things are equal or nearly so. But British voters are much more ready than those of other countries to sink this preference if the outsider is a man of distinctly superior qualifications. In every House of Commons there are members, sometimes a good many of them, who sit for constituencies in which they do not reside and never have resided. There is a great advantage in this absence of a residential requirement, for it enlarges the field of selection and thus helps to maintain high standards of candidacy.

Non-resident candidates.

The polling day.

The polling takes place on the same day throughout Great Britain.[1] Prior to 1918 the returning officer in each constituency was given a certain amount of leeway in fixing the election date, with the result that the polling did not take place everywhere on the same day. Certain counties and boroughs would vote on Monday, others on Tuesday, some more on Wednesday, and so on for a whole week or longer. Clerks and counters moved from one constituency to another, being hired by the returning officers. As they were experts, the polling-machinery ran smoothly and errors in counting the votes were rarely found. On the other hand this habit of stringing the elections over a week or two had some objectionable features. It prolonged the tension and excitement of a general election. It gave the constituencies which voted last an advantage over those which voted first. They could see how the election was going and swing to the winning side, which not infrequently they did. When half the constituencies had voted the result was usually predictable. This took most of the ginger out of the voting in all the rest. So the Act of 1918 provided for a one-day general election as in the United States. In all the constituencies the polling now occupies the hours from eight in the morning till eight at night, but the polls may be opened at seven and kept open until nine, if the candidates so request, and occasionally this is done in thickly-populated constituencies. There is no such general uniformity of polling hours in American congressional elections. Each state, and sometimes each city, fixes its own hours for opening and closing the polls.

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[1] Nominations are made on the eighth day after the date of the royal proclamation summoning a new parliament; the polling is held on the ninth day after the nomination. In the United States the interval between the nomination and the polling is much greater—often two months or more. In the university constituencies the polling is not limited to a single day but is continued for several days.

How the list of voters is compiled.

The register of voters in each constituency is made up and revised twice a year without any reference to whether an election is impending. Thus the list is always in readiness. The function of preparing it belongs to the registration officer in each constituency. He is usually the town clerk of a borough, or the clerk of the county council, as the case may be. Prior to 1918, when the suffrage was tied up with the occupancy of property, it was the practice to compile the voters' lists from the assessment rolls. But since the establishment of manhood suffrage (with a large number of women added) it has become necessary to secure the names by resort to something like census-taking methods. The compilation is not made, as in most American states, by requiring the voters to come to a certain place and be registered. The British registration officer appoints canvassers who go about from house to house collecting the names of all those who are qualified to vote. These canvassers, early in January and July of each year, make their rounds with a copy of the last previous list, finding out at each house what changes have taken place during the six-month interval. When they present their reports to the registration officer, the latter makes up a provisional list which is then posted in various public places —at the town hall, the post office, sometimes even in the vestibules of the churches—with an announcement that all claims and objections must be made within a certain interval. Anyone who finds that his name is not on this provisional register may apply to the registration officer to have it put on, and anyone can object to the inclusion of a name already there. The registration officer, after hearing such claims and objections, makes known his decision in each case, but this decision may be appealed to the courts. After an interval has been allowed for the making of such appeals the register is closed and thereafter no changes can be made in it until the next semi-annual revision. Attached to the regular list is a supplementary register of absent voters. This includes the names of persons who, by reason of their being in the military or naval service, or for some other good reason, are likely to be absent from the constituency when an election is held.

Infallibility of the list.

In Great Britain the register of voters, when finally closed, is deemed to be infallible. Under no circumstances may anyone vote unless his name is on it. The Act of 1918 is explicit on this point and permits no exceptions. It matters not that a name was left off inadvertently and through no fault of the voter. No officer or court has authority to make changes in the final register. No citizen may "swear in" his vote at the polls, as is sometimes permitted in the United States. And, conversely, if the name of any person is erroneously placed on the list he is customarily allowed to vote even though he is obviously ineligible. There is some question, nevertheless, as to whether the inclusion of a name on the register is absolutely conclusive evidence that the owner of the name has a right to vote. For although the Act of 1918 explicitly provides that anyone whose name is on the register shall be entitled to vote, it adds the qualifying proviso that this shall not "confer a right to vote on any person who is subject to any legal incapacity to vote." It would seem, therefore, that a person who is under age, for example, need not be permitted to vote if his name should happen to get on the list in error. But not all polling officers understand it that way and at every election there are stories about some infant's being carried into the voting booth to mark a ballot. The idea that no one whose name is on the register may under any circumstances be denied a ballot is deeply embedded in the English mind, but it does not appear to be warranted by the wording of the law.

The ballot.

The ballot used in parliamentary elections is short, simple, and bears no party designation. It contains merely the name, address, and vocation of each candidate. The names are set down in alphabetical order and each name is followed by a blank space in which to mark a cross. The ballot is hardly larger than an ordinary envelope. Attached to each ballot by a perforated line is a numbered stub or counterfoil. The purpose of this counterfoil is to enable the poll clerks to keep track of the ballots. These counterfoils are torn off before the ballots are placed in the box and are kept to check up with the total number of votes cast. The ballots are printed at the public expense under the supervision of the returning officer and are furnished by him in packages to each polling place. The returning officer also designates the polling places and assigns to each poll a deputy returning officer or presiding officer of the poll, together with one or more poll clerks. Each candidate is also allowed to have an agent or scrutineer inside the polling room.

Polling places.

The polling places are usually located in public buildings,—at the town hall, a school, or a court house—but it is often necessary to hire space in private buildings as well. Within the polling room are hutches or compartments in which the voter marks his ballot. Then he drops the ballot into the box and walks out with a feeling that he has done all he can to save the empire from catastrophe. The ballot box is merely a covered tin box with a slot in the lid. It is not a complicated churn-like contrivance with a handle for inserting the ballots, such as is often used at American elections. When the poll is closed the box is sealed and sent to the town hall or other headquarters where the counting is to take place.

Challenging voters.

The presiding officer of the poll, the poll clerks, and the agents of the candidates are all sworn to secrecy. The only function of the agents is to check off the names of those who vote and guard against the personation of voters. They have a right to challenge any voter on the ground that he is not the person whose name is on the list, but not on any other ground. Challenges are decided by the presiding officer of the poll and there is no appeal from his decision. Ordinarily if the voter makes a sworn statement that he is the person whose name appears on the list the presiding officer will accept this statement. Challenges are much less numerous than at American elections, although in the Irish constituencies prior to the war they were by no means uncommon.

Absent voting.

Absent voting has been permitted in parliamentary elections since 1918. Persons who are on the absent voters' list or are unavoidably absent from the constituencies in which they are enrolled as voters may appoint proxies to vote for them. These proxy papers are filed with the returning officer. No person except a near relative may serve as a proxy nor is anyone eligible to serve as a proxy unless he is himself a voter. Instead of appointing a proxy to vote for him, however, the absent voter may obtain a ballot in advance of the election and send it to the returning officer by mail, but this alternative is not open to him unless he mails the ballot from somewhere within the United Kingdom. An absent voter, if he is outside the United Kingdom, must use the proxy method in order to have his vote counted.[1]

Counting the votes.

When the poll is closed, and the ballot boxes brought to a central place, the counting is done by the returning officer and his assistants. The procedure of counting the ballots is quite different from that followed in the United States where the work is done at each polling booth. In Great Britain the first step is to verify the number of ballots in each box with the total as shown by the poll records. Then all the ballots from the various polling places are mixed together. This is done in order that no one may know how the vote stood at any particular polling place. Only the totals for the whole constituency are announced; hence no candidate can ever tell from the official count whether he ran strong in one ward or parish and weak in another. This will sound strange to the ears of any American politician. Every candidate for Congress insists on knowing the result in each precinct, and those who are defeated sometimes spend a good deal of time in a post-mortem analysis of the figures. At any rate, when the thousands of British ballots have been shuffled together they are divided into bundles according to the candidates for whom they have been marked, and the ballots in each bundle are then counted. Spoiled ballots are taken out and put in a special envelope. In spite of this centralized counting a large proportion of the results are announced before midnight on the day of the election. Within a certain space of time any candidate can demand and obtain a recount.

The plan for proportional representation rejected.

The Act of 1918, which made so many important changes in the British electoral system, provided that commissioners should be appointed to prepare a scheme under which one hundred members of the House of Commons might be elected at a general election according to the principles of proportional representation in constituencies returning three or more members. The act also provided, however, that the scheme was not to go into effect until approved by both Houses of Parliament. A plan was prepared and in the House of Lords it met with considerable favor, but a resolution to approve it was rejected by the Commons.[1] Thereupon public interest in the matter subsided until after the election of 1924 when the project began once more to be discussed, especially among members of the Liberal party.[2]

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[1] A proxy paper, unless cancelled in writing, remains effective so long as the maker's name continues on the absent voters' list.

Election methods in older days.

English parliamentary elections are conducted in a dignified and orderly way, with very little hubbub and virtually no corruption. It was not so in the old days. Some of Hogarth's drawings give us an idea of what an English election was like in the middle of the eighteenth century. Hired bullies went about intimidating voters. Day after day, while the voting continued, new hogsheads of wine were tapped at the expense of the candidates. Fights between the supporters of each party were of nightly occurrence and no kid-gloved affairs they were. Heads were broken and eyes blackened in the name of patriotism. Then, when the last vote had been polled and counted, the successful candidate was "chaired" by his friends—carried unsteadily above the heads of the crowd with the motley procession of inebriates following him.[3] It took England some time to recover from the debauch of a general election in the days of the Georges.

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[1] It may seem surprising that the House of Lords, which is traditionally a conservative body and indisposed to any changes in political methods, should have been so eager for the introduction of the proportional plan. The reason, of course, is that the Lords were sagacious enough to see that the rise of the Labor party might soon place the older political parties in a minority. This is not to imply that the Lords are more sagacious than the Commons, but their own vicissitudes (as a House) have perhaps imbued them with a greater respect for the rights of minorities—at least in the abstract.

[2] Proportional representation is used in some of the university constituencies. It is also used in the Irish Free State elections (see *below*, chap. xvii).

[3] "The plowman's Hail-Fellow-Well-Met with the Squire,
Of his company proud, he hurrahs and he drinks,
And himself a great man of importance he thinks:
He struts with the gold newly put in his breeches,
And dreams of vast favors and mountains of riches.
But as soon as the day of election is over,
His woeful mistake he begins to discover.
The Squire is a member—the rustic who chose him
Is now quite neglected—he no longer knows him!"

Election campaigns in Great Britain.

Something ought to be said about present-day methods of British parliamentary campaigning, for they differ a good deal from those used in American congressional elections. In every British constituency there is, as will be explained more fully later on, a local association and committee for each party. Each party also has its national or central committee. The local associations are responsible for choosing their respective candidates, but if no good local candidate is available, or if sufficient funds cannot be raised in the constituency, the central committee is usually asked to help. It responds by "recommending" some non-resident candidate, and in this way exercises a considerable influence upon the local candidatures. Even among local aspirants the influence of the central committee is often a matter of consequence, the measure of its influence being the extent to which the local campaign has to be financed from central headquarters. One of the best ways for an aspiring young man to get into the House of Commons is to do effective organizing work at the national party headquarters and eventually get recommended to some constituency which is shy of good parliamentary timber—as we would phrase it in America. Some outstanding political leaders have made their start in that way.

In any case, it is desirable that the candidates be placed in the field early, for no man knoweth the day or the hour when a general election may come. It is also desirable that the candidates should begin their campaigns early by speaking at gatherings whenever invited, and by taking every means to broaden their range of acquaintance in the constituency. So they appear at public functions of every sort; they take an active hand in every good cause; they put their names on each subscription list that comes around; they submit to a good deal of gentle blackmailing and try to do it with good grace. All this is colloquially known as "nursing the constituency," and the zeal with which some of the Labor candidates have out-nursed their rivals is highly instructive. It proves that the rise of Labor has not put an end to the money power in English politics.

The practice of "heckling."

As soon as the date of a general election is announced, each candidate issues an address or manifesto to the voters of the constituency and broadcasts it through the mails. The laws permit each candidate to send one circular free of postage. These manifestoes give an outline of the candidate's views on the political questions of the day and call upon the electors for their votes and influence. Meetings are then arranged, usually in halls and schoolrooms, but also on the street corners as is the fashion in American cities. At these meetings, even before the candidate has had his say, the members of the audience are permitted to ask questions. The privilege is mainly utilized by voters whose attitude is hostile—hecklers, they are called, because their aim is to heckle the candidate into saying something that can be used against him. Heckling usually leads to a rapid fire of repartee between the floor and the platform while the audience displays its leanings by the relative amount of applause which it bestows upon the candidate and his hecklers respectively. Only a quick-witted candidate with a ready tongue can come through this sort of campaigning with success. Lloyd George, throughout his long public career, has shown remarkable adroitness in dealing with the hecklers and rarely have they got the better of him. Even when the candidate is a woman, the heckling goes on. The saving grace of it all is the habit of giving everybody, candidates and hecklers, a square deal. Heckling is an institution which would not be tolerable but for the British tradition of fair play. Although it seriously detracts from the decorum of an election campaign and contributes very little to the elucidation of the issues, the voters like it and would strenuously object to its discontinuance.

Advertising in British politics.

To some extent the candidates appeal to the voters through newspaper advertisements and more by posters on billboards. Not so much literature is sent to voters through the mails as in America. Most candidates employ "sandwichmen" who walk up and down the principal streets with placards tied to them fore and aft. On them are printed the party slogans and various catch-phrases importuning the people to mark their ballots for somebody "and Liberty," or for somebody else "and Cheap Bread," or whatever slogan seems to fit the time and place. Cartoon posters play a prominent part in English campaigns and some of them are very forceful in the impressions which they manage to stamp on the public imagination. In the art of political cartooning England is far ahead of other countries. The billboards, during an election campaign, afford material for some interesting studies in the psychology of propaganda.

Personal canvassing.

The most striking difference between British and American campaign methods is to be found in the vastly greater emphasis which British politicians place upon the personal solicitation of votes. There was a time when candidates for Congress were in the habit of "heeling" their districts, going from door to door in quest of support, but the number of voters in a congressional district is now too great for this procedure. A certain amount of personal canvassing is still carried on in the United States by each candidate's helpers, but this is not his main reliance for success at the polls. In England the personal canvass is reduced to a science. Each political party opens committee rooms in all parts of the constituency and at these rooms the names of all the voters in the neighborhood are arranged by streets. Friends and supporters of the candidate are then given blocks of names to be canvassed. Each name is written on a separate card with a blank space left for the canvasser's report. The cards, after the voters have been visited, are brought back to the committee-room marked For, Against, or Doubtful. All the doubtful voters are then made the target of whatever influence or persuasion can be brought to bear. Attempts are also made to secure converts from among those who have been reported hostile. Nobody is overlooked in a well-organized campaign. Every English voter expects to be canvassed on behalf of all the candidates, and feels himself slighted if he is not. The candidates and party committees, by the way, are not allowed to hire canvassers; the laws forbid this, the whole thing has to be done by volunteers. This means, of course, that some of it is well done and some of it very poorly. The difficulty of conducting these personal canvasses has been much increased, of course, by the large increase in the electorate due to the partial enfranchisement of women.

The cost of election campaigns in Great Britain.

Less money, on the whole, is spent in English than in American political campaigns. This is partly because money for campaign funds is not so easily raised in Great Britain as in the United States, and partly because an American congressional district contains so many more voters than a British constituency. Many years ago parliament passed a statute known as the Corrupt and Illegal Practices Act which aimed to eliminate electoral frauds and set a maximum limit upon campaign expenditures. This statute, and amending acts, make a distinction between *corrupt* practices and *illegal* practices. Corrupt practices include bribery, intimidation, personation, falsifying the count—things which involve moral turpitude. Illegal practices include doings which are not wrong in themselves but which tend to make an election undignified, unduly expensive to the candidates, or in some other way objectionable. Hence the illegalities comprise the hiring of canvassers, or bands, or too many committee rooms, or conveyances on election day. The laws also set a limit on legal campaign expenditures. This limit, as fixed by the latest amendment (1918), is seven pence per voter in counties and five pence per voter in boroughs.[1] An expenditure of seven pence per voter means only $3000 in the average constituency; it would amount to more than three times as much in a congressional district. These expenditures must be made through an authorized agent of the candidate, whose appointment is certified to the returning officer of the constituency.[2] After the election this agent makes a sworn statement of all his disbursements, including the personal expenses of his candidate. This last-named item is important because such expenses are not usually included in the maximum fixed for American elections.

Election protests. A defeated candidate for the House of Commons may petition to have an election invalidated by alleging corrupt or illegal practices on the part of the victor or his agents. Such petitions are not heard, as in America, by the legislature itself; they are tried by the courts. When an election protest is filed in Great Britain the issue is referred to the King's Bench Division of the High Court, where two judges are assigned to hear all the evidence without a jury. The court then certifies to the speaker of the House of Commons its report confirming or unseating the member-elect. It is not the practice of the judges to void an election because of merely technical violations. They require evidence that there has been corruption or illegality on a scale sufficient to have influenced the result. Hence the voiding of an election is a relatively uncommon occurrence. If the matter in dispute relates to the legal qualifications of the elected candidate, and not to the manner of his election, it is investigated by the House itself and is not referred to the judges of the High Court for a recommendation.

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[1] The distinction is made on the ground that the voters in the rural constituencies are more difficult to reach.

[2] The agent is usually paid; but his fee does not have to be included within the maximum legal allowance.

There is no long interval between the election and the summoning of parliament. As a rule the members are brought together at the earliest possible moment after a general election. This is in accord with the spirit of the British political system which demands that members of the ministry, who constitute the administrative branch of the government, shall at all times possess the confidence and support of a majority in the House of Commons. The only way to determine whether the ministry possesses this support is to call the House into session. So long as a ministry continues in power after a general election without summoning parliament it is technically administering the affairs of the country without a mandate from the people.

CHAPTER IX

THE HOUSE OF COMMONS

> With all humble and due respect to Your Majesty . . . our privileges and liberties are our right and due inheritance no less than our lands and goods; . . . they cannot be withheld from us, denied or impaired, but with apparent wrong to the whole state of the realm.—*The Commons' Apology of 1604.*

A chamber with a history.

If the House of Lords is the oldest great legislative body in the world, the House of Commons is a close second. As a representative chamber it has no rival in age, for nearly six centuries have run their course since "the faithful Commons" began to function as a separate chamber. But it is not age alone that gives the House of Commons its high place among the lawmaking bodies of the present day. Its powers are unique in their range and in the absence of any formal limits upon them. Parliament and the House of Commons are to all intents one. The House has supremacy in lawmaking; it controls the finances of the realm and dominates the action of the crown. And its procedure is more interesting than that of any other representative chamber. It used to be said that the House of Commons was the best club in London, and certainly there is no other legislative body that commands a keener rivalry for admission. It is the institution of which Englishmen are most proud, and rightly so.

The older meeting places.

For many centuries the House of Commons has held its sessions at Westminster, a city which has now become a part of Greater London. Originally it met in the chapter house or refectory of Westminster Abbey, a structure which dates from the time of Edward the Confessor, last of the Saxon kings. Then the Commons moved to St. Stephen's Chapel within the palace of Westminster, where it continued its sessions right through the eras of Tudors, Stuarts and Hanoverians until 1834, when the palace was gutted by fire. Thereupon the new palace of Westminster, or the Houses of Parliament as the great structure is now more commonly called, was erected during the years 1837-1852.[1]

Where the House now sits.

The Houses of Parliament flank the left shore of the Thames and cover an area of nine acres. They form a vast edifice containing more than twelve hundred rooms, the largest building in Europe with the exception of the Vatican. The architecture of the building is Tudor Gothic and the design was by Sir Charles Barry. In the heart of the structure is a great central hall; to the south of this hall is the chamber of the House of Commons, and to the north of it the chamber of the House of Lords. Grouped around these chambers is a labyrinth of lobbies, corridors, committee rooms, offices, retiring rooms, and other subsidiaries. In various parts of the building likewise there are libraries, dining halls, and smoking rooms, as well as living quarters for certain officers of parliament such as the speaker, the clerk, and the sergeant-at-arms.

The Commons' chamber.

The chamber occupied by the House of Commons is cut off from all external outlook, and from the natural access of fresh air also. The only light comes from windows above. The chamber is oblong in shape with a broad aisle running down the center. At one end of this aisle is the entrance; at the other end the speaker's chair is placed. There is a sliding rail or barrier at the entrance, alongside which sits the sergeant-at-arms. None but members are permitted to pass this entrance, which is called the bar of the House. On either side of the aisle are long benches upholstered in leather, rising tier on tier. The members sit (or sprawl) on these benches, with no desks in front of them. It is odd, by the way, that this "best club" should have such deficient accommodation for its members. By crowding the benches and using some reserved space in the gallery it is possible to provide seats for about 450 members; but the total membership of the House is more than 600, which means that with a full attendance many are compelled to stand. No individual seats are regularly assigned, but members who are supporting the ministry traditionally sit on the benches to the speaker's right while members of the opposition sit on his left.[1] The two front benches which face each other nearest the speaker's chair are known as the Treasury bench and the front Opposition bench respectively. The custom of the House is that members of the ministry sit on the one and the leading personages of the opposition on the other.

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[1] The long period of construction was due not only to the size of the structure but to changes in plans and various mishaps. The cost, as originally estimated, was £800,000; the actual outlay proved to be about £2,000,000.

How the House begins its work.

On the first day of the session the members of the Commons assemble in their own chamber. If it is a new parliament, that is, a parliament meeting for the first time after a general election, the members must begin by electing a speaker. But by ancient tradition they cannot do this until the lord chancellor, in the name of the crown, directs it to be done, and by usage he does this from his place in the House of Lords. So the commoners spend a few minutes in a buzz of conversation until the official messenger of the Lords (commonly known as Black Rod), appears and invites the House to come across the hall.[2] Whereupon, headed by the clerk of the House, the commoners troop through the great corridor to the bar of the Lords where they stand in silence while the lord chancellor announces "His Majesty's pleasure that you proceed to the choice of some proper person to be your speaker." Then the commoners, without a word in reply, wander back to their own chamber and with the clerk of the House as their temporary mentor proceed to do as they have been bidden.

Electing a speaker.

The election of a speaker, as will be indicated a little later, is usually a mere matter of form and takes but a moment. The choice must be approved by the crown, but this also is a mere formality, the royal approbation being announced to the Commons by the lord chancellor. The speaker now takes the oath of allegiance and the members, in groups of five at a time, do likewise. Then comes another call to the House of Lords to hear the speech from the throne.[3] Preceded this time by the sergeant-at-arms, the members once more betake themselves to the gilded chamber where they crowd into the rear portion of it and into the galleries as best they can.[1]

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[1] When the ministerial party has a large majority, however, the overflow goes to the left also.

[2] His full title is "Gentleman Usher of the Black Rod." His insignia of office is an ebony rod tipped with gold.

[3] In the case of a newly-elected parliament the election of the speaker takes place on the first day and the speech from the throne is delivered on the day following. The members do not take the oath until after the speaker has been chosen.

The speech from the throne.

The speech from the throne is delivered either by the monarch in person or by someone whom he designates for this duty. It is never a long address and its delivery usually consumes but a few minutes. As has already been mentioned, it is prepared by the prime minister in consultation with his cabinet. It comments upon the general state of the realm, adds a paragraph or two on foreign relations, foreshadows the more important government measures which are to be introduced, and invites the House of Commons to grant the appropriations needed for carrying on the government. When the speech is finished the commoners return to their own chamber where the speech is re-read to them by the speaker. Before this is done, however, the House advances a dummy bill through its first stage—this to demonstrate that it can do business on its own responsibility.[2] Then it proceeds to debate an "address in reply" to the speech from the throne. This address is always in common form, being merely an expression of loyalty to the crown and of satisfaction with the recommendations made. Its adoption is moved and seconded by two private members from the ministerial side of the House who are designated for this purpose by the prime minister. The opposition may propose amendments to the address, in which case the first debate of the session is precipitated. As a rule, however, the address is adopted without change and the House is then ready to plunge into its routine business.

The regular sittings.

The House of Commons meets on Mondays, Tuesdays, Wednesdays and Thursdays at quarter to three o'clock in the afternoon. On Fridays it meets at eleven in the forenoon. No meetings are ordinarily held on Saturday, the chamber being thrown open to visitors on that day. The forenoons are kept free for committee work. The sittings of the House usually last through the afternoon and into the evening.[3] The rule is that opposed business may not be proceeded with after eleven o'clock at night unless on motion of a minister; but unopposed business may be dealt with for a half hour later. It sometimes happens, however, that the House remains in session all night and even through the whole of the next day.[1] The rules permit the application of the closure in order to shut off debate, as will later be explained; and the ministers regularly ask the House to limit debate in this way whenever the dilatory tactics of the opposition are seriously interfering with the progress of government measures. Forty members of the House constitute a quorum, which is only about seven per cent. of the entire membership. In Congress the requirement (as fixed by the constitution) is a majority. Except when questions of nation-wide interest are under consideration the actual attendance at sittings of the House of Commons is relatively slim. As a rule there are seats enough for all who want to be in the chamber at the same time. But many other members are within reach in the lobbies, the smoking room, the library, the restaurant, or during fine afternoons on the terrace. They are at hand if needed—if any question is pressed to a vote. When the House is plodding its way through supply the back benches sometimes yawn in emptiness. Much business is done with fewer than forty members present, without a quorum, for the speaker pays no attention to this requirement unless some querulous member asks for a count.

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[1] In older days there was an unseemly rush for points of vantage, but since 1902 the strangers' gallery in the House of Lords has been reserved for commoners on this occasion.

[2] The bill selected for this purpose is always the same, namely, "A Bill for the Better Preventing of Clandestine Outlawries." It is never advanced to a second reading.

[3] There is no regular adjournment for the evening dinner hour but the chamber is usually well emptied between the hours of seven and nine, unless business of an exciting nature is before the House.

The speaker.

The speaker is the most conspicuous figure in the House.[2] Despite his title, he never speaks in the debates nor does he say any more than he has to in any other connection. His position is as old as the House itself and his title is derived from the fact that he alone has the right to speak for the House of Commons before the king. Originally the speaker's chief function was to take petitions and resolutions from the House and lay them before the king in parliament, that is, in the House of Lords; for it will be recalled that in early days the House of Commons was a petitioning rather than a lawmaking body. The House besought the king to make laws, and the king made them if he felt so inclined. The House prayed the king to redress grievances, and the king complied at his own discretion. The speaker was merely the bearer of these numerous and sometimes unwelcome requests. His post was in truth no sinecure, for if the monarch happened to be out of humor, Mr. Speaker might find himself in trouble.

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[1] The longest continuous sitting without adjournment was one which lasted from Monday afternoon until Wednesday morning, during the session of 1881.

[2] In addition to the speaker, the chief officers of the House are the clerk and the sergeant-at-arms. Both are appointed by the crown on the advice of the prime minister and both hold office for life. The clerk and his assistants are in charge of the House records; the sergeant-at-arms has various ceremonial functions and is the agent of the House in the exercise of its authority.

Some notable speakers.

The first in the long line of speakers was Peter de Montfort, who held office in the reign of Henry III. For several centuries the office was usually held by a lawyer, and some noted jurists figure on the list of speakers, including Sir Thomas More and Sir Edward Coke. When the crown and parliament came into conflict, as so often happened during the hectic Stuart era, the speaker had to be a rare diplomat in order to keep from incurring the wrath of the one or the other. Students of English constitutional history will recall, for example, the case of Sir William Lenthal, who was speaker of the House when Charles I strode into the chamber with a troop of soldiers and tried to arrest five of its members. But the offending members had been warned and had vanished from the chamber before the king arrived. Advancing to the speaker's chair, Charles demanded to know whether any of the five members were present. Lenthal fell on his knees and replied, "May it please your Majesty, I have neither eyes to see nor tongue to speak in this place save as this House is pleased to direct me." "I see," said the king, "that all my birds have flown," and with that the crestfallen monarch stalked out of the House amid cries of "Privilege! Privilege!"

How the speaker is chosen.

Although the choice of a speaker must be approved by the king, it is inconceivable that this approval will ever be refused, for the selection is really made by the prime minister before the House acts at all. In other words, the prime minister selects the speaker after consultation with the members of his cabinet and after assuring himself that the choice is generally acceptable to the House. The nomination is then made and seconded by two private members in order to emphasize the idea that the choice is ultimately that of the whole House and not that of the ministers. Both the House and the king assent as a matter of course, for neither could refuse their concurrence without registering a lack of confidence in the ministry.[1]

So, when the prime minister has chosen his man, all else is mere routine. The election in the House is not an election at all but a pantomime. The clerk starts the proceedings. An ancient custom forbids him to utter a syllable, so he merely points with his right forefinger at some member of the House whose name has been given to him as the mover of a motion to elect a speaker. This member thereupon rises and moves that so-and-so "do take the chair of this House as speaker." Then the clerk, in the same dumb pantomime, indicates a member on the opposition side who is to second the motion. The speaker-designate then rises in his place and humbly submits himself to the will of the House, which acclaims him with cheers.

The motion is not put to a vote, for there is no contest save on the rarest occasions. The speaker who served in the preceding parliament is by custom always re-elected, even though the ministry has changed. It has not been at all uncommon, therefore, for a Liberal to serve as speaker with the Conservatives in power, and vice versa. If a speaker dies or does not return as a member of the new parliament, the prime minister makes a new choice, usually designating the deputy speaker for promotion to the speakership, and by custom this choice is accepted by the House. Only once in the last fifty years has the opposition put forward a rival candidate and the circumstances in this instance were quite unusual.[2]

The speaker a non-partisan.

The speaker, from the moment he takes the chair, ceases to be a party man. He discards his party colors, be they buff, or blue, or red. He is no longer a Liberal, a Conservative, or a Laborist. He attends no more party gatherings and is not called into consultation on any matters of partisan policy. He is a neutral both in thought and act. This neutrality, moreover, is not a fiction; its reality is shown by the fact that the speaker is never opposed for re-election in his own constituency. At each general election his constituency sends him back to parliament unopposed—so long as he remains speaker. When a member of the House of Commons is chosen to the speakership, therefore, he need give no further thought to the repair of his own political ramparts. He has made his calling and election sure.

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[1] Approval has never been denied since the principle of ministerial responsibility came to be recognized. The last refusal was in the case of Sir Edward Seymour whom Charles II declined to confirm in 1678.

[2] This was thirty years ago when Sir Mathew White Ridley was put forward to oppose the election of Mr. Speaker Gully. The Liberals on this occasion had a very narrow majority and there were other factors which tempted the opposition to a trial of strength.

Prestige of the office.

No wonder the speakership is regarded as a prize, an office not only of great honor but of long tenure. Its emoluments are also substantial. The speaker receives a liberal salary; he has an official residence in Westminster Palace, and he gets both a pension and a peerage when he retires.[1] But every rose has its thorn, and the speaker must accept with his office a sentence of exile from politics. That comes hard to one who likes the wager of battle. And it is no mere outward show of non-partisanship that the speaker must display. He must walk straight as a die. Whether in recognizing members who desire to speak, or in ruling on points of order, or even in giving the casting vote, he must act with the impartiality of a chief justice. He must know neither friend nor opponent in applying the rules. If he has his likes or dislikes, he must somehow manage to keep them submerged.

The speaker's work.

Even when called upon to give a deciding vote in the case of a tie, the English speaker does not act in accord with his own personal opinions. He breaks a tie by voting impersonally, in obedience to certain well-established principles. If, for example, his negative vote would determine the defeat of a measure while his affirmative vote would prolong its consideration, the speaker always votes "Aye." If a tie comes on a proposal to adjourn the debate, he always votes "No." If he be in doubt as to his duty, or as to the proper ruling on any question of order or privilege, he inquires from the clerk of the House, who is a skilled parliamentarian. Occasions for the casting vote rarely arise; sometimes not once in several years. The speaker's rulings on points of order are final; they may not be appealed to the House. The speaker may, if he desires, submit any questions to the House for its opinion and may be guided by its decision, but when he makes a ruling on his own responsibility there is no over-riding it. The House, on the other hand, can suspend its own rules by a majority vote at any time and thereby circumvent a speaker's ruling, but it very rarely finds occasion for doing so. The rules are suspended now and then, but not for this purpose.

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[1] Both the peerage and the pension are matters of usage. There is no statutory provision that the speaker shall have either. But when a speaker retires it is the custom of the House to present an address to the crown stating its willingness to vote the money for a pension if the crown asks for it. The peerage, of course, is within the gift of the crown without parliamentary action.

How the House opens.

The speaker's chair or throne is at the head of the main aisle. Below and in front of it is the clerk's table. At the appointed hour the speaker's procession formally enters the chamber. After prayers have been read by the chaplain the mace is laid on the table and the speaker counts the members to ascertain the presence of a quorum. If forty members are not in the chamber, he takes a sand-glass which is kept at his right hand and turns it over. Meanwhile the bells in the corridors, lobbies, reading rooms, smoking rooms and library begin to tinkle. The sand takes about two minutes to run from one of the glass compartments into the other and if a second count at the expiration of this interval discloses fewer than forty members, the speaker may adjourn the sitting.[1] The same procedure is gone through whenever anyone, after the sitting has begun, raises the question of a quorum. Adjournments for want of a quorum take place very seldom, for it is a rare occasion when fewer than forty members are not somewhere within call. It is the business of the whips (of whom more will be said hereafter) to see that these members are called in when needed.

The rules of the House.

There is a common notion that the House of Commons, unlike other legislative bodies, has no printed rules. This popular impression is the basis of a time-honored story concerning a new member who went to the clerk's desk on the first day and asked for a book of rules. "There is no book of rules," replied the clerk. "Then how am I to learn them?" queried the neophyte. "By breaking them, sir," came the answer. The story is apocryphal, for the House of Commons has its printed rules, known as "standing orders," like any other legislative chamber. It ought to be added, however, that the standing orders do not cover the whole procedure of the House, much of which rests upon usage. And the usages are not all to be found in any printed book.[1] Many years of parliamentary experience are required to familiarize a member with all the intricacies of parliamentary procedure, and in that sense it can perhaps be said that newcomers learn the rules by breaking them.

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[1] If, however, the business before the House be the consideration of a message from the crown, it is proceeded with despite the presence of fewer than forty members.

Their permanence.

Unlike those of Congress, the rules and standing orders of the House are permanent. They do not have to be re-adopted after each general election. Nor have they the rigidity of congressional rules, inasmuch as they can be suspended at any time, or amended, or repealed, by a majority vote. One might think this a dangerous power to place in the hands of the majority, but it has not been abused. When the rules of the House are suspended it is usually for the sole purpose of expediting business, with the consent of the minority, and not as a means of putting legislation through by steam-roller methods.

Nature of the rules.

The greater number of the rules and standing orders deal with the allocation of time for different classes of business (such as government measures, private bills, private member's bills, and questions) and with the course of procedure which these various matters must take. Measures introduced by the ministry, as will be more fully explained later, have the right of way. Private member's bills are crowded into odd hours. At the commencement of each daily sitting a limited amount of time, not exceeding an hour, is set apart for questions. This is a feature of English parliamentary procedure which has no counterpart in American legislatures. These questions, which may be asked by any member, are addressed to the minister within whose field of administration the matter belongs, or if the minister be a member of the House of Lords, to his representative in the Commons. No member may ask more than four questions at a single sitting. Save in exceptional cases it is required that due notice of intention to ask questions shall be given and the questions then appear on the printed program of business known as the "Orders of the Day," which each member receives at the beginning of the sitting. The questions are restricted to requests for information and according to the rules must not contain any "argument, inference, imputation, epithet, or ironical

The "question time."

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[1] Most of them, however, are in Sir Erskine May's book on parliamentary procedure, which is the English parliamentarian's bible, just as Asher C. Hinds' *Precedents* serves a like purpose in the American House of Representatives.

expression." But some of the questions come perilously near offending in this way and the speaker of the House, in such cases, may reframe them or even reject them altogether. The minister to whom a question is addressed may decline to answer it if it deals with some matter of diplomatic or domestic policy which ought to be kept confidential.

Character of the questions asked in the House.

When "question time" arrives in the House, therefore, the members flock into their seats, for the interrogations and answers are a daily source of enlightenment—and often of amusement. "I beg to ask the chancellor of the exchequer Question Number One," says a member from one of the rear opposition benches. There is a fluttering of leaves as every one turns to the question as it stands printed on the Orders of the Day. Then the chancellor of the exchequer, or his parliamentary secretary, rising from the Treasury bench, proceeds to read the answer from the typewritten sheets in his hand. Sometimes it is a long explanation; sometimes a single curt sentence.[1] In any event, no debate or discussion follows the giving of replies.

Herein the procedure differs widely from the interpellation in the French Chamber of Deputies where, as will be seen later, the minister's reply is always followed by a debate and a vote. When a minister answers any question in the House of Commons there is no way of determining whether a majority of the members regard the answer as satisfactory. The House merely proceeds to the next item on the notice paper. At the close of the question period, however, any forty members can precipitate a discussion of a minister's reply by rising in support of a motion to adjourn. Then, if the speaker of the House accepts this motion as falling within the principles on which such motions are permitted, a debate is set for the same evening. But this procedure is not common. Large numbers of questions are placed on the Orders, many of them dealing with wholly trivial matters. They average from one hundred and fifty to two hundred per day. Some years ago a committee which investigated the possibility of economizing the expense of government made an estimate that the preparation of typewritten answers to each one of these questions cost the English taxpayer about seven dollars and a half, on the average.

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[1] From the *London Times* (July 2, 1924).

Mr. SNOWDEN, Chancellor of the Exchequer (Colne Valley), asked by SIR C. OMAN (Oxford University, U.) whether he had authorized the Royal Mint to strike silver coins for the Russian Soviet Government, in large bulk. . . .—Does the right hon. gentleman consider it dignified for Great Britain to become the paid handicraftsman of a foreign government with which it is yet unable to enter into satisfactory relations? Mr. SNOWDEN.—The question of dignity is a matter of one's opinion.

Mr. SNOWDEN, Chancellor of the Exchequer (Colne Valley), in reply to Mr. A. CHAMBERLAIN (Birmingham, W., U.), who asked what action the Government proposed to take in consequence of the decision of the committee on the motion which was carried against them in the budget discussion on the previous day, said:—I have not much to add to what I said on the spur of the moment last night. The Government are now considering the form of the proposals they will make upon the matter on the report stage of the bill, and we hope to be able to submit a form of words which will embody what undoubtedly was the desire of members of the House who took part in and watched the debate—namely, to give relief in regard to the entertainments tax to entertainments the proceeds of which are devoted to charitable purposes and which at the same time will safeguard the revenue against abuse.

Great merits of this arrangement.

Assuredly the procedure involves a large expenditure of time and money, but the members value their privilege highly and would not permit it to be curtailed. The moral effect upon the ministers is good, for they know that any administrative action, however unimportant, may be dragged out into the light of publicity.[1] They must be on guard at every question hour. Many of the questions are trivial, but the English minister has learned that more may lurk in a question than appears on the surface. An innocent-looking query is often propounded with intent to draw an offhand or ill-considered answer. Then comes a supplementary question which discloses what the questioner is really gunning for. The ministers are aware of all this, having been themselves the framers of questions while in opposition, and they are not easily trapped. The importance of the question hour, with all that it implies, has been inadequately appreciated by foreign students of English government. It is an extraordinarily effective check upon those bureaucratic tendencies which are bound to appear in every government with an expert administrative staff. Ministers get irritated at the flood of questions: their subordinates (who have to prepare the answers) blaspheme at the members who frame them; but the private citizen has no reason to complain. The question hour in the House of Commons is well worth all that it costs the taxpayer. As a palladium of his rights and liberties it is worthy to be ranked with trial by jury and the writ of habeas corpus. Many answers, by the way, are given in printed form.

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[1] If the end of the question hour arrives before all the questions have been answered, the remaining answers are printed in the official report of the House proceedings.

Debates in the House.

While there is no opportunity for debate in connection with the questions, there is room for plenty of it at various stages in the passage of legislative measures. Most speeches in the House of Commons are short; it is quite unusual for anyone to speak longer than an hour, although this occasionally happens when measures of great importance are under discussion. The longest speech, according to the records, was a deliverance by Brougham who spoke for more than six hours in 1828 "to a thin and exhausted House." But Prynne's historic plea for the life of Charles I (1648) occupied almost the same length of time, and Gladstone on one occasion spoke for five hours.[1] There is no time limit. But there is a limit to the patience of the members, and even the whips cannot keep a quorum for a long-winded orator. Speeches, whatever their length, are taken down verbatim and published in bulky volumes known as the Parliamentary Debates or, more commonly, as "Hansard." [2] An hour's speech occupies fifteen or sixteen columns of this publication, hence a single debate may occupy a hundred pages or more.

Committees of the House.

In legislative bodies throughout the world a large part of the preliminary work is assigned to committees. The House of Commons is no exception. All bills now go automatically to one of its regular committees unless the House votes otherwise in particular cases. These committees of the House of Commons are of various types. First there are the *standing* committees, as they are called,—committees which are appointed at the opening of a session and remain unchanged until parliament is prorogued. To these standing committees, of which there are now six in all, certain classes of bills are referred; each committee receiving the measures which fall within its particular field of jurisdiction. Second, there are *select* committees, appointed to consider and report upon individual measures or questions which involve some new principle, or upon some subject which has not yet come before the House in the form of a bill.

1. Standing committees.

2. Select committees.

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[1] None of these, of course, constitutes a world record. Pliny once spoke in the Roman Senate for seven hours. Several speeches in Congress have been much longer than Pliny's.

[2] The debates were originally published by Hansard as a private venture. They are now issued as an official publication under the control of the House.

They differ from standing committees in that they rarely deal with public bills and very often are merely appointed to make a study of some timely subject. Some of these select committees continue through the session and hence are often called sessional select committees or, more briefly, sessional committees.[1]

3. The Committee of the Whole House.

Finally, there is the Committee of the Whole House. In other words, the entire House sits as a committee; the speaker leaves the chair and his place is taken by a chairman who is appointed afresh in each new parliament and is a stanch party man; the mace is placed under the table as a sign that the House, as a House, has adjourned. This method of doing business goes back to Stuart times. When the House resolves itself into Committee of the Whole the more rigid rules of procedure are relaxed; a member may speak several times on the same question if he desires, and any matter which is voted upon can easily be opened for reconsideration. Because procedure in the Committee of the Whole House is so simple and flexible the practice of considering the details of measures in this way has proved popular not only in the House of Commons at Westminster but in the House of Representatives at Washington.[2] When the Committee of the Whole House has finished with its consideration of a measure, item by item, a motion is made that the committee "rise and report." The speaker then resumes the chair and the chairman reports the committee's action, in other words the House reports to itself and then proceeds to adopt its own recommendations.

How committees are chosen in America.

In American legislative bodies, with the exception of the two Houses of Congress, all committees (apart from the Committee of the Whole) are ordinarily appointed by the presiding officer. This is true of most state legislatures, city councils, and indeed of unofficial organizations. In the House of Representatives at Washington the appointing of committees was for a long time in the hands of the speaker and this prerogative made him the virtual master of business. During the years 1910-1911, however, the rules of the House of Representatives were changed and the power of appointing committees was taken from the speaker. Committees in both branches of Congress are now appointed, in a roundabout way, by the Senate and the House themselves.[1] In the House of Commons the speaker has never had, at any time, the function of appointing committees. To give him this power would be to make his office the very negation of what it is supposed to be, namely, a sanctum of neutrality amid the warring factions of partisanship.

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[1] For example, the Committee on Public Accounts and the Committee on Petitions.

[2] When the House of Commons is discussing revenue measures the Committee of the Whole House is called the Committee of Ways and Means; when it is considering appropriations or expenditures it is called the Committee of Supply. Colloquially, the members speak of "the House in Ways and Means" or "the House in Supply."

How committees are chosen in England.

Committees in the House of Commons (with the exception of the Committee of the Whole House) are chosen by a committee of selection. This committee of selection, which contains eleven members, is named by the House itself at the beginning of each parliamentary session. But while ostensibly named by the House itself, the membership of the committee of selection is arranged in advance by a conference between the prime minister and the leader of the opposition. In making up the various standing and select committees, this committee of selection does not pay strict attention to party lines, although members of the different parties are selected in something like the proportion that they have in the House as a whole. Each standing committee ordinarily contains from forty to sixty members, but the rules of the House provide that from ten to fifteen supernumerary members may be added to serve during the consideration of any designated measure; the design being to strengthen the committee when some matter requiring special knowledge is before it. Select committees are much smaller; they ordinarily have fifteen members, except in the case of select committees on private bills, which have four members only. Each standing or select committee has a chairman but this official is neither named by the committee of selection, as is the practice in Congress, nor chosen by the committee itself. Instead, the committee of selection names a panel of chairmen and this panel chooses from its own membership a chairman for each committee.[2]

The cabinet is not officially ranked as a committee of the House of Commons, yet it is in fact the greatest parliamentary

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[1] See the author's *Government of the United States* (revised edition, New York, 1925), pp. 194-195, 235-243.

[2] In the case of the select committees on private bills, however, the chairman is designated by the committee of selection.

The cabinet as the chief committee of parliament.

committee of them all. It is the steering committee. It is the originator and the censor of all important business. Nothing of any general importance has much chance of getting through the House of Commons unless the ministry favors it or at least refrains from opposing it; on the other hand a measure has every chance of passing if the cabinet lends its support. There are exceptions to this general rule, of course, and these exceptions were naturally more frequent during the time when a Labor ministry was in power without firm control of a majority in the House. But when a ministry controls a majority, as it usually does, there is no gainsaying its mastery of the legislative program.

Nevertheless the cabinet's control of committees is by no means so strong as its control of the House. Party discipline is not so strict in the one as in the other. Hence it frequently happens that a standing committee amends a bill in a way which the ministers dislike. The minister in charge of the bill must then decide (usually in consultation with his colleagues) whether he will accept the amendment or ask the House to strike it out when the committee reports the bill. This the House will do if the ministry insists, but coercive tactics are not popular in England and the ministers often find it wise to concede or to compromise. In any event the minister in charge of a government measure must familiarize himself with every detail of it, must follow its course day by day in committee, and must guide it through the House. It is for this reason that the ministers are the real leaders of the Commons and collectively form "the great standing committee of parliament."

The House of Commons and the House of Representatives compared.

Between the House of Representatives and the House of Commons there are many analogies and contrasts. Although one is child of the other, and bears unmistakably the marks of its parentage, the difference in environment has not been without its effect upon both structure and temperament. The House of Commons is the larger body, but it makes a much poorer showing in point of consistent attendance. It is a less animated body, with less noise and bustle and racket on its floor. Its whole atmosphere is one of dignity and leisure. The House of Representatives, to a visitor in the gallery, seems to be rushing through its business at breakneck speed, with a large number of members in attendance but relatively few of them paying

In general atmosphere

much attention to what is going on. It can all be summed up in the saying that one body is characteristically English while the other is just as characteristically American. Each has its own distinctive habits and moods.

The two speakers.

In America the speaker of the House is always a party man, chosen by a caucus of the majority members. His election is always opposed by the House minority and when he takes the chair he does not discard his party allegiance. On the contrary, he sometimes becomes a more aggressive partisan than he was before. The standing committees of the House of Representatives are much more numerous than those of the House of Commons and (with one exception) are considerably smaller in membership. Select committees are appointed in Congress on rare occasions only. In Congress, moreover, the chairman of each committee is designated when the committee is formed and the chairmanship almost always goes to the senior majority member; that is, to the member from the dominant party who has served longest on the committee.[1] In the House of Commons seniority of service also counts to some extent. A young or inexperienced member is never made chairman of a standing committee, but among older and more experienced committeemen no great stress is laid on relative length of service. Personal ability and the capacity to preside count for more than seniority.

Classification of bills.

Another difference is that at Washington all measures, including money bills, go to a standing committee before being taken up by the House of Representatives, either in Committee of the Whole or otherwise, whereas in England money bills go to this latter committee directly. Congress makes no distinction, moreover, between public and private bills; all bills are public bills no matter how limited their scope may be. Hence all go to the regular committees. Most of the bills which go to committees in the House of Representatives never come back again; they die and are buried in the committee's files. In the House of Commons, on the other hand, every committee must return all the bills assigned to it for consideration. Again, the dominant party in the House of Representatives always obtains a majority on every important committee, a majority which is sufficient to insure its control of the committee's action. In the House of Commons this is not necessarily the case. The six standing committees are made up in a manner favorable to the majority party in the House, but the select committees (especially those on private bills) are constituted without any reference to party affiliations.

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[1] The next member in order of seniority is known in congressional parlance as the "ranking member."

Leadership

Finally, the most important of all contrasts is to be found in the fact that the cabinet of the United States has no direct connection with the process of lawmaking. It is not a steering committee of Congress, and Congress would resent its assumption of any such rôle. By virtue of the ministerial system the House of Commons is provided with a strong group of executive leaders who guide and virtually dominate its work. In the older text books on English government it is commonly stated that "the House of Commons controls the cabinet." Fundamentally, that is true, for the House can dismiss the cabinet from office at any time. But it is equally true that "the cabinet controls the House." Under normal conditions the cabinet leads and the House follows. It may refuse to follow, no doubt, but the fact remains that it rarely does so under any circumstances and practically never when the cabinet system is functioning as the theory of English government expects it to function. When the House of Commons rebuffs ministerial leadership it is because an abnormal situation exists. But the House of Representatives feels itself at full liberty to bolt presidential leadership, be the situation normal or otherwise. In no sense does the executive branch of the government "control the House" at Washington.

Annual sessions.

The House of Commons must be summoned into session at least once a year or, to put it more accurately, there must not be more than a twelve-month interval between the close of one session and the beginning of another.[1] A session usually lasts from five to seven months. The House is ordinarily called together in December or January and continues to sit until June or July, or perhaps a little later, with brief adjournments over week-ends and holidays. During the world war it became customary to hold autumn sessions as well, and these seem likely to become permanent institutions. When the cabinet decides that it is time to bring the session to a close, it so informs the king, and parliament is accordingly prorogued. Either House may adjourn of its own accord; but both Lords and Commons must be prorogued together. Prorogation terminates all pending business; hence a measure which has not been finally passed by both Houses at the date of prorogation must be introduced anew at the next session and must go through all its stages over again in order to become a law. When parliament has run its legal course of five years, or when the cabinet at an earlier date desires a general election, the crown dissolves the House and summons a new parliament. The terms adjournment, prorogation, and dissolution refer, therefore, to different things.

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[1] For the reason see *above*, p. 45.

Parliament (or either House of it) is *adjourned* for a few days in the same session; it is *prorogued* from one session to the next; and it is *dissolved* in order that a new House of Commons may be elected by the people. In summoning parliament both the Lords and Commons are invariably called to meet at the same time. In the United States the Senate may be called into session, and sometimes has been so called, without the House of Representatives. This is because its action may be needed to confirm presidential appointments or to ratify treaties. The British House of Lords has no powers of this character and there is accordingly no reason why it should meet when the Commons is not in session. Even for impeachments, the initiative of the latter is essential.

The organization, powers, and procedure of the House of Commons are dealt with in many books. The best summaries may be found in Lowell's *Government of England*, Vol. I, chaps. xii-xviii, and in Anson's *Law of the Constitution*, Vol. I, pp. 253-321. Brief discussions, which deal with the subject from various angles, are included in Spencer Walpole's, *Electorate and the Legislature* (London, 1892), chaps. iii, vi-viii; Sir. Courtney Ilbert's, *Parliament* (New York, 1911), chaps. ii-iii; C. F. G. Masterman's, *How England is Governed* (London, 1922), chap. xiv; Moran's *English Government*, chap. xiii; Marriott's *English Political Institutions*, chap. xi; Low's *Governance of England*, chap. xi; Jenks' *Government of the British Empire*, chap. vii; Lord Courtney's *Working Constitution of the United Kingdom*, chaps. xvii-xviii; Hogan's *Government of the United Kingdom*, chaps. v-vi; and Ogg's *Governments of Europe*, chaps. x-xi. See also the references appended to chapter x.

CHAPTER X

THE PROCESS OF LAWMAKING IN PARLIAMENT

The House of Commons is a very clumsy machine, but it works, and on the whole it turns out a good deal of work. It would be a better machine if men were a little less vain and more given to silence.—*John Bright.*

Much as I admire American institutions, I should not like to see their rules of procedure transferred to this House. Probably they have more eloquence there than we have here, but it seems to me that their rules tend to make the debate artificial.—*T. P. O'Connor.*

The genesis of legislative procedure.

In the early stages of its history the House of Commons took no part in the formal enactment of laws. As has been said, it merely petitioned the crown to make laws. Laws based upon the petitions of the House were then framed and enacted, at its own discretion, by the crown in council. But these laws were sometimes not in accord with the spirit of the petitions, and there were numerous protests on that account. Eventually, in 1414, the king agreed "that from henceforth nothing be enacted to the petition of the Commons contrary to their asking." And soon thereafter the House of Commons adopted the plan of presenting its petitions in the form of bills, all ready to be enacted. With this step came the need for a system of parliamentary procedure, and presently there developed the practice of giving each measure three readings, referring it to a committee, and holding debates on it when differences of opinion arose.

The procedure was very simple at first; but year after year new complications were added by action of the House or developed by usage. All systems of legislative procedure tend to become more complicated as they grow older. The existing process of lawmaking in the House of Commons is the outcome of a growth and development which covers nearly five hundred years, and legislative procedure in all other countries is to a large extent modelled upon it. In the United States the deviation from the English procedure, in all its essentials, has been relatively small.

English and American procedure is substantially akin.

To the casual visitor, sitting in the galleries, the methods of legislative procedure at Westminster and at Washington seem to be wholly unlike. But the differences, save in one important respect, are superficial only. They do not affect the underlying principles, which (with one exception) are the same in all English-speaking legislative chambers. Measures are introduced on both sides of the Atlantic in much the same way; they are given three readings, referred to committees, reported out, debated, amended, and sent to the other chamber. The differences relate principally to the organization and work of the committees and the limitations on debate. Congress has modified the original rules for the purpose of expediting business, but the fundamentals remain unaltered. The colonial assemblies of America borrowed their procedure from parliament; the state legislatures which were called together after the Declaration of Independence continued these rules; and Congress, on its organization in 1788, took its procedure from the state legislatures.

But there is one very important difference:

The distinction between public and private bills.

There is, however, one important feature in which the process of legislation in Congress has diverged from that of parliament. In parliament a distinction has long been made, and is still made, between public and private bills; in Congress there is no such distinction. According to British parliamentary practice a public bill is one which affects the general interest and ostensibly concerns the whole people or, at any rate, a large portion of them. A measure for changing the tax laws is a public bill; so is a bill for altering the suffrage, or raising the age of compulsory school attendance, or establishing a new administrative department. A private bill, on the other hand, is one which relates to the interest of some individual, or corporation, or municipality. A bill authorizing the construction of a new railway line, or the extension of an old one, or giving a municipality powers beyond those which it possesses by general law, is a private bill. There are some bills, of course, which come in the twilight zone between these two categories, but so many measures have been presented to parliament and ruled upon during its long history that the precedents now cover almost every conceivable case, and the speaker merely follows these precedents in deciding, when doubt arises, whether a bill belongs in the public or the private class.

Public bills may be brought in by a member of the ministry, Government bills and private members' bills.

in which case they are known as government bills. All money bills must be so introduced.[1] But public bills (other than those which relate to the raising and spending of money) may also be brought in by any private member; that is, by a member of the House who is not a member of the ministry. Such public bills are known as private members' bills and a word of caution should be added lest the reader drop into the pitfall of confusing these "private members' bills" with "private bills." Government bills, money bills and private members' bills are all *public bills* and in the process of legislation are so dealt with. Private bills, on the other hand, are based on petitions from the parties directly interested and go through a special procedure. Any bill, whether public or private, may be introduced either in the House of Commons or the House of Lords; the only exception being that money bills must originate in the Commons. As a matter of practice, however, the great majority of all measures originate in the Commons.

How public bills are introduced.

Most of the important measures laid before parliament are government bills, which means that much preliminary consideration is given to them by the cabinet. Important government bills are all cut and dried at Whitehall before being brought to Westminster. One of the ministers makes the first rough outline of a bill, stating only the main principles. This he lays before the cabinet for discussion. If the principles are agreed to, he then turns his outline over to an expert draftsman for elaboration into a finished measure, with sections, sub-sections, and paragraphs. Thereupon the cabinet gives it a final look-over and the bill is ready to be introduced. The introduction of every bill is preceded by a notice, printed in the Orders of the Day. When called upon by the speaker, the minister or private member files his bill with the clerk of the House, who reads its title aloud.[2] Thereupon, without hearing the contents of the bill and without debate, the House orders it to be printed and placed in line for a second reading. The measure must then wait

The first reading.

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[1] No money bill can be introduced unless a previous resolution of the House in Committee of Ways and Means has been passed declaring the expediency of incurring certain expenditures or of imposing certain taxes. No such resolution can be moved except by a minister of the crown. The same is true of every bill which, though not in form a money bill, involves in fact a charge on the public funds.

[2] Sometimes the bill is not in finished form when the time for its introduction arrives. In that case the minister hands the clerk a dummy bill

its turn. On matters of great importance the opposition usually gets its first inkling of ministerial policy at the initial reading. Cabinet secrets are well kept in England.

The second reading and reference to committees.

In due course the bill is again reached by the House; it appears among the Orders of the Day, and its sponsor moves that it be "read a second time." This second reading gives opportunity for a debate on the principles of the bill. Discussions of individual provisions are tabooed, and amendments which merely aim to alter the phraseology of the bill are not in order at this stage. The question is whether the House desires legislation of the proposed type at all. If the opposition desires to test its strength with the ministry, here is the opportunity to do it. It may move that the bill be given its second reading "this day six months," which would put it over to a date when the House is not in session, and hence is equivalent to an indefinite postponement. Or it may offer some resolution which is hostile to the general tenor of the bill. Long debates often mark this stage in the progress of important measures—debates which extend over several days. Such debates are usually followed by a vote (a "division," it is called in England) which determines whether the House approves or disapproves the principles of the bill. In the case of a government measure a defeat at this stage betokens a want of confidence in the ministry and under normal conditions would compel it to resign. Only on the rarest occasions, however, has a government measure been refused a second reading.

The committee stage.

Having passed its second reading the bill enters the *committee stage.* It is referred to a committee for the consideration of its detailed provisions. Ordinarily every public bill (except a money bill) goes to one of the six standing committees; but in exceptional cases, the House sometimes orders it to a select committee.[1] If the measure be a money bill, it goes to the com-

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with nothing but the title written down. If the bill be one of great importance, however, the minister sometimes gives a brief summary of it at this stage. It sometimes happens, moreover, that the minister in charge of an important bill will "ask leave to introduce it." This provides him with an opportunity to make an extended speech on the measure and for a general debate to arise.

[1] The reference of a public bill to a select committee is very uncommon, and it is usually for the purpose of examining some new principle which has been embodied in the bill. In 1923, for example, a bill providing for the equal guardianship of children by husband and wife was referred to a select committee representing both Houses.

mittee of the Whole House immediately after its second reading. Moreover, the House may at any time and for any reason order a non-financial measure referred to the Committee of the Whole House, but this is seldom done.

The report stage.

The organization of these various committees has already been explained.[1] Every measure sooner or later reaches the House from a standing committee, a select committee, or from the Committee of the Whole House.[2] Then it enters the *report stage*, being laid before the House in amended and reprinted form. Bills may come back from committees and be given their third reading forthwith, but important measures rarely have any such good fortune. If amendments have been made in committee, these may be debated during the report stage, and alternative amendments offered. All the old questions which were threshed out at the second reading may be debated over again—and in the case of a controversial measure they usually are. At the close of this debate the measure is ready for its third reading. In connection with the third reading of a bill no amendments are in order. If it is desired to change the substance or phraseology of a clause, even slightly, the bill must go back to committee. The House must now accept or reject the bill as it stands. Rejections at the third reading are not common. Here ends the action of the Commons and the bill goes to the House of Lords for concurrence.

The third reading.

Procedure in the case of private members' bills.

British parliamentary procedure is based upon the theory that the initiative, as respects all public measures, belongs to the cabinet and that government measures ought to have the right of way. Hence, although public bills may be introduced by private members, they have relatively little chance of passage or even of prolonged discussion. This is because most of the daily sittings of the House are reserved for government measures and only a few are available for the consideration of private members' bills.[3] Even these sittings, moreover, are taken over by the ministry for government bills when the pressure of business becomes heavy. Nevertheless, private members sponsor a great many public bills, and as there is no chance of considering them all, the rules of the House provide that a selection from the entire grist shall be made by lot. At an appointed hour, therefore, those private members who desire to introduce public bills are required to put their cards in a box at the clerk's table, and the clerk draws them out one by one. The member whose name is first drawn gets the opportunity to introduce his bill on the first Friday of the session; the second member gets the second Friday, and so on till the Fridays of the session are exhausted—twelve or fifteen of them in all.

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[1] See *above*, pp. 168-170.

[2] Parliamentary procedure has undergone some change in this matter during recent years. Before the war it was the normal practice to have the committee stage of all highly important measures handled in Committee of the Whole House. Today it is customary to refer even the most important measures to the standing committees. An interesting consequence of this change is that the debates in these standing committees are now published officially in full, like the debates in the House itself.

[3] From the opening of parliament to the Easter recess, private members have every Friday, also Tuesday and Wednesday evenings from 8.15 to

Having had the good fortune to get his bill on the Orders in this way, the private member moves that it be read a first time and secures it a second reading; it then goes to one of the standing committees, and follows the same procedure as other public bills. "If a member is lucky in this lottery and can introduce a bill which is generally popular, and which neither the ministers nor any of his fellow-members dislike, and if he possesses the art of appeasing opposition, he may manage adroitly to steer his bill through a parliamentary session."[1] But few members can hope to run this gauntlet successfully and although scores of private members' bills are prepared on the eve of each session it is unusual for more than a half dozen of them to gain places on the statute book before parliament is prorogued or dissolved.

Procedure in the case of private bills.

Their usual nature.

So much for public bills, whether introduced by the ministry or by private members. All other bills are known as private bills. The most numerous class among these private bills are bills introduced by municipalities asking for special powers. English municipalities have a broad range of powers laid down by general law, but from time to time they desire special powers in addition. These powers they seek, in many instances, by means of private bills. Every year parliament gives special powers to individual cities (boroughs) in this way. A highly advantageous arrangement this is deemed to be, for it gives flexibility to the system of local government and enables parlia-

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11 P.M. After Easter they lose Tuesday evening; after Whitsuntide they lose Wednesday evenings and some of the Fridays.

[1] C. F. G. Masterman, *How England is Governed* (New York, 1922), p. 248.

[illegible]

ment to give one municipality additional powers as an experiment without committing itself to the same policy for all.

Private bill procedure.

These private bills are presented to parliament in a different way and do not follow the same procedure as public bills. They are presented in the form of petitions with the bills attached. They cannot be introduced by merely giving notice on the order paper but must first go before two parliamentary officials (one from each House) known as the Examiners of Petitions for Private Bills. Every petition for a private bill must be preceded by certain published notices, the object of which is to inform those whose private interests may be affected by the bill. Copies must also be sent in advance to the government departments concerned—to the Board of Trade in the case of a private bill incorporating a gas company, for example, or to the Ministry of Transport in the case of a bill authorizing the taking of land for a street railway. It is the duty of the Examiners to see that these requirements as to notice and copies have been complied with. If they find that there has been full compliance, they so certify, and the bill may then be presented in either House. If they find that the requirements have not been fully observed they so report to both Houses which then refer the bill to two committees—one appointed by the House of Lords and the other by the House of Commons at the beginning of each session. These are known as the Committees on Standing Orders, and they decide whether the non-compliance shall be overlooked and the bill introduced at the current session. Either House, on the recommendation of its committee, will then permit the bill to be brought in. Otherwise it is sent back to the petitioners and cannot be considered until the next session.

Private bills committees.

On introduction, all private bills are read a first time and ordered to be read a second time. After second reading, if there is no opposition, they are referred to a committee on unopposed bills, unless some new principle is embodied in one of the bills, in which case it may be sent to a select committee. If there is opposition a bill goes to one of the private bills committees. These are small committees of disinterested members, who are appointed by the committee of selection from lists prepared by the party whips.[1] A private bills committee may be named to consider a single bill, but more often every such committee gets a group of measures.[1] Before going on a private bills committee, however, each member must sign a declaration that he has no personal interest, and that his constituents have no local interest in the measures to be considered.

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[1] Each private bills committee consists of five members in the Lords and of four members in the Commons. The chairman has a casting vote and

Hearings on private bills.

The private bills committees, each in its own committee room, give hearings to all who have a definite interest in the bills, whether for or against. Every private bill begins with a preamble setting forth the object of the bill. The committee first hears evidence and arguments on the question whether it is expedient to grant parliamentary powers for the fulfilment of this object. Then it decides that the preamble is proved or not proved. If the latter, the bill drops; if the former, the committee then proceeds with hearings on the clauses of the bill.[2] These hearings are of the nature of fair and thorough investigations; they are conducted by paid counsel on both sides, with testimony as in a court of law and arguments at the close. They differ from the legislative committee hearings with which Americans are familiar in that none but persons who have a *locus standi*, in other words a demonstrable interest in the bill, are permitted to give testimony before the committee. The committee, examining the bill and the evidence, has at its disposal a report from the ministry of health, the board of trade, the ministry of transport, or some other central department. In this way it is possible to make sure that the bill does not conflict with the general policy of the government or create an undesirable precedent. But it cannot be too strongly emphasized that the work of a private bills committee, while legislative in form, is largely administrative in effect, and is carried out in accordance with a procedure which is quasi-judicial in character.

The action of the House.

When a private bill committee has reached its decision it reports each bill, favorably or unfavorably, and with or without amendments to the House which its members represent. The

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three members form a quorum. For the composition of the committee of selection, see *above*, p. 170.

[1] Mention should also be made of the Local Legislation Committee, which consists of fifteen members and is appointed at the beginning of each year. To it are referred all local bills giving powers of a general nature in excess of those conferred by the ordinary police and sanitary laws. This committee may sit in two sections if the pressure of business so requires, and it has become an important factor in local government.

[2] The main fight is usually on the preamble, not on the clauses.

committee's report on the bill is almost invariably accepted, although there is no question as to the right of either House to reject a report on a private bill if it chooses to do so. But the members know that the committee has been impartially constituted, that it has given both sides a fair hearing, and that it has consulted the experts. They realize that recommendations coming before the House in this way should not be rejected by men who have had no opportunity to become acquainted with the facts. Occasionally, however, a private bill raises some issues of general policy and then the House may divide on the committee's report. But ordinarily it accepts the recommendation without discussion and thereafter the private bill takes the same course as a public bill.

Merits of the plan.

This method of dealing with private bills has two outstanding merits. It insures the careful, non-partisan, consideration of measures which, from their nature, ought not to be dealt with in a partisan spirit. It saves the time of the House by reducing its action on local measures to a series of formalities. The procedure rests upon the common-sense principle that the time of several hundred legislators should not be consumed, hour after hour, in discussing whether the borough of Battersea should have some additional powers or the Liverpool Tramways Company build tracks outside the city. In Congress, where public and private bills are dealt with in the same way, there is a terrific congestion of business. Measures which are in effect private bills come before it by the thousands. They are brought in by individual members. No matter how trivial their importance they are in all cases referred to some committee which may have many important bills of nation-wide interest to consider. The result is that most of the minor bills obtain very little consideration, and unless some influential members of Congress get behind them they are asphyxiated in committee. Many of them, no doubt, deserve this fate but it is not always the most meritorious that survive. The merits of an unimportant measure in Congress have little to do with its success in getting a favorable committee report. The main thing is the amount of influence behind it.

Would it not be better for Congress to discard the fiction that all bills are created free and equal—to accept frankly, as parliament has done, the principle that many measures are of purely local importance, and to provide that all such bills be dealt with by small, disinterested committees in a wholly non-partisan way? "The curse of most representative bodies," says President Lowell, "is the tendency of members to urge the interests of their localities or constituents. It is this more than anything else which has brought legislatures into discredit and has made them appear to be concerned with a tangled skein of private interests rather than with the public welfare. . . . Now the very essence of the English system lies in the fact that it tends to remove private and local bills from the general field of political discussion and this helps to rivet the attention of Parliament upon public matters."[1]

Its defects.

On the other hand, the English system of private bills procedure has the serious defect of being expensive. Many witnesses must sometimes be brought to London. Fees are charged for the introduction of a private bill and again at various stages in its progress through parliament. It also becomes necessary, when the bill is opposed, to employ parliamentary counsel or agents who exact substantial retainers. These parliamentary agents are professional law promoters; they are specialists in their work, and almost without exception they are lawyers of high standing.[2] But any person may become a parliamentary agent by registering as such and filing a bond. London has lots of them, and the best ones charge high fees for their services. They are not lobbyists in the American sense; their business is not to roam the corridors buttonholing members. They merely supervise the drafting of a private bill, see that the required notices are given, present the evidence to the committees, and make their arguments.

The system of "orders."

The quest for private or special acts of parliament has been considerably slackened by the use of "orders." These orders are issued by a central department and they become effective either automatically or when confirmed by parliament.[3] In the latter case they are known as "provisional orders." The reason for the issuance of these orders is that many general laws which have been passed by parliament (such as the Public Health Acts and the various acts relating to railways, street railways, public lighting, poor relief, and education), authorize the various government departments, such as the ministry of health, the board of trade, or the home office, to grant certain powers to corporations and municipalities whenever proper cause for such action can be shown. When, therefore, a power not already conferred by law is desired by some municipality, corporation, or individual, an application is made to whichever department has jurisdiction in the matter.

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[1] *The Government of England* (New York, 1909), Vol. I, pp. 391-392.

[2] There are two grades of lawyers in England—solicitors and barristers. The solicitor deals directly with the client; the barrister (when one is employed) is retained by the solicitor to appear in court, except in the minor courts where the solicitor may himself appear. In the case of private bills a solicitor prepares the case and may present it before the committee except in certain cases where the presentation of the case must be handled by a barrister.

[3] There are, in all, no fewer than six classes of orders, viz: (1) orders made by a central department which become effective when made and do not

Provisional orders.

For example, an application for authority to finance a hospital by the issue of municipal bonds goes to the ministry of health. The ministry, through its administrative officers, thereupon enquires into the merits of the application, and if it decides that the permission ought to be granted, an order is issued conferring the power desired. This order, as has been said, may be a provisional order, in which case it requires for its validity the subsequent ratification of parliament. The usual practice is to lump several provisional orders into a confirmation bill, and in that form they are presented for enactment into law. As a rule there is no opposition to these confirmation bills, in which case they are referred to the committee on unopposed private bills and go through the usual procedure. But if opposition arises they are referred to a select committee. It is less expensive to obtain authority in this way than by petitioning for a special act of parliament and the practice of applying for "orders" has become increasingly popular in recent years.[1] Even to a greater extent than the private bill procedure this plan has the merit of relieving

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require any reference to parliament; (2) orders which become effective when made but have to be laid before parliament; (3) orders which have to be laid before both Houses for forty days before they become effective, during which time, of course, they may be objected to in either House; (4) orders which do not become effective unless confirmed by resolution of both Houses; (This is a recent device and has not worked satisfactorily); (5) orders which become effective unless some authorized outside body objects, in which case they become provisional orders; and, finally, (6) orders which are provisional in every case, objection or no objection, and do not become effective until they have been embodied in a Provisional Orders Confirmation Act and passed by parliament.

[1] In addition to the granting of orders the various central departments give authorizations (e.g. to borrow money) in a less formal way. These authorizations are ordinary sanctions, not orders of any kind.

the House from what would otherwise be a heavy burden upon its time and attention.

Would the system of orders be practicable in the United States?

It has sometimes been suggested that Congress, and the state legislatures as well, might unburden themselves in this way from the great pressure now placed upon them. They might authorize the various executive departments (such as the department of commerce in the national government, or the department of education, or of public utilities in the state governments) to issue provisional orders which would have the force of law when confirmed by legislative enactments. But the American scheme of government by checks and balances does not lend itself readily to any such procedure. In Great Britain an executive department, being assured that there is a legislative majority behind it, can usually count upon the confirmation of its acts. In the United States there would be no assurance of such confirmation. The majority in Congress, or in a state legislature, is often hostile to the executive; and even when the two branches of government represent the same political party they do not always work in coöperation. Certainty of confirmation (save in very exceptional instances) is the feature which makes the English plan workable and no such certainty could be hoped for in America. To some extent in recent years, however, American legislatures have been giving to various administrative authorities and boards the right to issue orders having virtually the force of law—without the necessity of confirmation. The order-issuing powers given to the interstate commerce commission, to the federal trade board, and to public utilities commissions in the various states, afford good examples.

British and American procedure compared.

Having explained, in a general way, the various steps through which a bill passes on its way through the House of Commons —five steps in all[1]—it is now possible to compare the essential features of English and American legislative procedure. Fundamentally they are alike in that all bills must be read, and read again, but there are also some sharp contrasts between the two. In Congress, as has been said, there is no distinction between public and private bills, and none between government bills and private members' bills. All bills in Congress are

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[1] To wit: introduction and first reading, second reading, committee consideration, report stage, and third reading.

1. The absence of provision for formal executive leadership in America.

public bills introduced by private members. It is true, of course, that some measures may be inspired by the President or by the heads of the executive departments, and many notable illustrations of this were afforded during the two terms of President Wilson's administration. But measures are never laid before Congress by a member of the President's cabinet or in the name of his administration. Even when the President and his cabinet are earnestly bent on securing the passage of some measure there is no assurance that a majority of their own party in Congress will comply with their wishes. Time and time again the administration has thrown its full strength behind a bill and yet has failed to get favorable congressional action upon it. It is not so in the House of Commons, for there the members of the majority party are faced with the awkward fact that a vote against any government measure is a vote to turn their own ministers out of power and put their opponents in. This makes them far more amenable to the crack of the party whip. The American congressman, when he votes against some measure which the administration is known to support, knows full well that nothing catastrophic will happen. His party will not go out of power, if it is in power; it will continue in office to the end of its prescribed term, even though it be turned down by the House of Representatives on one measure after another.

2. Introduction of public measures.

Any member in either chamber of Congress may introduce any bill, save that money bills must originate in the House of Representatives.[1] But measures of comprehensive scope and great importance, including those which correspond to government measures in Great Britain, are usually laid before Congress by the chairman of the committee to which such bills would naturally be referred, and hence become designated by the chairman's name. That is why we speak of the Sherman law, the Mann act, the Adamson law, the Volstead law, and so forth. A measure for the further regulation of the railroads would ordinarily be brought in by the chairman of the committee on interstate commerce; a proposal to provide federal subsidies for elementary education would be introduced by the chairman of the committee on education. In a limited sense, therefore, the chairmen of committees in Congress assume the functions of initiative and guidance which members of the ministry are accustomed to exercise in parliament. Although they are not heads of administrative departments they are usually in close touch with the departments concerned, and are provided with all the data they may require. And expert draftsmen are used in the preparation of congressional measures although not to the same extent as in England.

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[1] Bills for raising revenue must, by the terms of the constitution, originate there; appropriation bills originate in the House of Representatives as a matter of long-standing practice.

3. A difference in committee work. In Congress, again, all bills are referred to committees before there is any discussion of their principles or general merits. In one respect this is an advantage, in another a defect. It gives the committees more freedom in overhauling a bill and changing its substance. On the other hand, it means that a committee must do its work without having first ascertained the attitude of the House toward the measure as a whole. Hence it sometimes happens that congressional committeemen will spend several weeks in perfecting the details of a bill which is then rejected by the whole house on its general merits or lack of merits. The excellence of the work done by the English parliamentary committees is due, in part at least, to a feeling of reasonable certainty that their labor will not be in vain. For they work on no public bill until after the House has accepted it in principle.

4. Chairmen of committees in the two countries compared. The chairmen of committees in the House of Commons, on the other hand, do not obtain the prominence or the publicity that is given to the chairmen of important committees at Washington. They do not figure so prominently in the debates. On the floor of the House they are quite overshadowed by the ministers who take personal charge of all government measures. Their names are not tacked to bills and thus displayed in the newspaper headlines. There is still another difference: the chairman of a parliamentary committee (like the speaker of the House) is deemed to be absolutely impartial. He presides, and maintains decorum in his committee-room, but he does not take sides. The chairman of a congressional committee has no such reticence. He is a power in his committee and sometimes dominates it. He has no hesitation in working openly in behalf of a measure which his committee is considering, or in working openly against it.

Finally, there is a lively competition for places on the more important committees at Washington; at Westminster there is very little. In the case of private bills committees there is even some effort to evade service, and the House of Commons has occasionally had to use compulsion.[1]

5. The system of questioning the ministers.

The use of the "question hour" in the House of Commons points to still another important procedural difference. When a congressman desires information from one of the executive departments he telephones or writes for it, and if he does not obtain it in that way he may offer a resolution requesting it. But he is not allowed to consume the time of the whole House in pelting questions at the administration. The administration in Washington cannot be questioned on the floor, for nobody officially represents it there. Some chairman of a committee, or some other congressman, may constitute himself a spokesman for the administration and may rise in its defence when hostilities are directed against it; but he does so in an altogether unofficial capacity. In parliament, as has been pointed out, there is a regular time for asking questions and for answering them from the floor.

6. Yielding the floor.

There are two practices in the American House of Representatives which the House of Commons has thus far avoided. One is the custom of requesting a member to yield the floor when he is in the middle of his speech. This is done at almost every sitting in Washington, and although the member who has the floor may decline to yield it he usually complies as a matter of courtesy. In this way a debate on a general question is often turned into a personal or sectional fracas. This custom of yielding the floor is unknown in the House of Commons. In that body, when a member rises to speak he may be interrupted at times by cries of "Hear, hear" or "No, no" from the opposing benches, but he is not cut in upon by some other member until he is through. The continuity of the debate is in this way preserved.

7. Granting leave to print.

Then there is the "leave to print" arrangement. It has no place among the usages of parliament. The only way in which a member of the House of Commons can have a speech printed at the public expense is to deliver it. But in Congress many undelivered speeches are printed, session after session. A congressman speaks for five or ten minutes and then moves that he be given leave to "extend his remarks" in print. Nobody objects, as a rule, for everybody prefers to have him print a long speech rather than to hear him deliver it. So there is inserted in the *Congressional Record* a rambling disquisition which would have taken an hour to expound. In some cases a congressman obtains leave to print, in this official journal, a speech no portion of which has been delivered at all. Copies are then struck off by the thousand and franked through the mails to voters in the congressman's district—to show them what an accomplished spokesman their representative is. The English voter has been spared this infliction.

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[1] In 1924 the House passed a resolution ordering one of its members to attend the meetings of a private bills committee from which he was absenting himself. The offending member promptly obeyed.

Party responsibility as a feature in the two countries.

Much has been written about the concentration of party responsibility in England and the fidelity with which party pledges are redeemed. A British political party, when it makes a promise to the people, is enabled by the organization and procedure of parliament to fulfil this promise. If it triumphs at the polls, it controls both the executive and legislative branches of government. The cabinet then proceeds to crystallize the party's promise into government measures with the assurance that these measures will be enacted into law. But in America the organization and procedure of the government does not so readily lend itself to the redemption of party pledges. Candidates for the presidency make all sorts of promises, express and implied, during the election campaign. But without the coöperation of Congress there is no way in which most of these promises can be carried out. Senators and representatives also make pledges, but unless the administration is ready to help in fulfilling them they go mostly unredeemed. The same is true, *mutatis mutandis,* in state government. Party programs are, therefore, a much less accurate forecast of future legislation in America than in England. Party pledges are more set at naught here than there. English parliamentary procedure is based upon the principle that the dominant political party, through its majority in the House of Commons and under the leadership of the ministry, is unequivocally responsible for the fulfilment of its program. No checks and balances stand in its way. It cannot avoid, evade, or make excuses. That is the theory of lawmaking in England and the practice of it runs close to the design.

Some defects of the English system.

But this system has the defects of its qualities. It is hard on the private member, especially on the "back-bencher" who is not prominent in the councils of his party. His power to initiate legislation, although unlimited except as respects money bills, is in reality very small. It amounts to much less than that of the individual congressman. He can bring in a private member's bill but his chances of getting it considered, much less those of having it passed, are exceedingly slim. The standing orders, the traditions of the House, even the theory of ministerial responsibility are all against him. True enough, he may suggest amendments to government measures when they are in the committee stage, and it is also true that a minister who desires to get his measures through cannot afford to disregard the back benches. At times, indeed, a private member may become an influential factor in the shaping of legislation on the floor, although such cases are rather exceptional. Finally, it is often said that the private members exert a steady pressure on the course of ministerial policy, not merely on the floor of the House but by their expressions of opinion to the ministers outside.

The superior initiative of the individual congressman.

All this, however, does not give the private member in the House of Commons an influence upon legislation which averages up to that of the individual congressman. For the latter can introduce any bill of his own, whether involving expenditures or not, and may obtain for it the same consideration that other bills obtain. His bill is not denied consideration because he happens to have bad luck in a lottery. He can, moreover (and often does), most strenuously oppose measures which are sponsored by a President of his own party, and may vote to defeat such measures. He need not lose status in his party by so doing. There are times, of course, when the members of Congress are under obligation to accept the decisions of their respective party caucuses; but the great majority of measures are not made the subject of caucus action. The American congressman, in short, has a greater range of initiative and discretion than is traditionally allowed to the private member in the House of Commons.

Limitations on debate:

Both the House of Commons and the House of Representatives have devised ways of bringing a debate to a close and preventing obstruction by the minority. More than eighty years ago the House of Representatives adopted a rule that no congressman might speak for longer than one hour except by unanimous consent, and about the same time it was agreed to amend the rule relating to the previous question so that it might be used more effectively in shutting off debate.[1] A motion that "the previous question be now put" may be made by any congressman and if the motion prevails, with a quorum present, the vote on the main question must be taken forthwith. A motion that any matter be laid on the table is also in order, and with a few restrictions may be offered at any time. It must be voted on without debate, and if carried it tables not only the amendment under discussion but all other amendments and the main question as well.[2] A more common and less drastic method of shutting off discussion in the House of Representatives is by an advance agreement as to the time at which the debate shall be brought to a close. The committee on rules, after consulting the leaders on both sides, recommends a time limit and the House accepts it. Then, when the time limit is reached, the speaker brings down his gavel and the vote is taken.

1. In the American House of Representatives.

2. In the House of Commons.

In the House of Commons the rule relating to the previous question was devised and adopted more than three hundred years ago. But in its original form this rule did not accomplish much, as was shown during the debates on Irish questions, so the obstructionist tactics of the opposition led ultimately to the adoption of the *closure*, as it is called. This is substantially the previous question rule as followed in the House of Representatives except that the speaker of the House of Commons may refuse to put the motion if he believes it unfair to the minority; a power which the speaker at Washington does not have. But even this did not put an end to obstruction where the clauses of a long bill were being taken up one by one in Committee of the Whole House. The previous question had to be invoked on every clause. So the House of Commons devised another weapon for handling obstruction. This is the process known as closure by compartments—which is the application of the previous question to a whole group of clauses in a bill. Somebody moves, for

The closure

Closure by compartments.

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[1] The "previous question" rule, in its original form, was first adopted by the House of Commons in 1604. It was put into the first set of rules adopted by the House of Representatives in 1789.

[2] Robert Luce, *Legislative Procedure* (Boston, 1923), p. 276.

example that clauses seventeen to twenty-three "stand part of the bill." Then, if the speaker approves, and a majority agrees, the debate on these clauses is at an end. A variation of this is known as the "kangaroo closure," an arrangement which permits the speaker and the chairman of the Committee of the Whole House in Ways and Means to select amendments for discussion out of those which appear on the order paper and to pass over the rest.[1] The chairman of a standing committee does not have this power. In the hands of an impartial speaker or chairman this is a valuable yet entirely fair arrangement for expediting business.

The "kangaroo closure."

The time-table.

By majority vote the House may also fix a time limit for the consideration of the various clauses of a bill. Then the guillotine falls at the expiration of the allotted period whether all the clauses have been discussed or not. But the guillotine is not frequently used; it has not been brought into play except on one occasion during the past ten years. The practice now is to make a time-table when an important controversial measure comes up. The minister in charge of the bill asks the House to approve a resolution allotting so many days to the second reading, to the committee stage, to the report stage, and so on. The time-table may even assign specified hours to individual clauses.

Conclusion.

It will be noted, therefore, that although the nomenclature is different, the methods of expediting measures actually employed by these two great English-speaking legislatures are essentially alike. The closure, in all its forms, is a crude and arbitrary process which ought not to be used except as a last resort. Far better it is, as both Houses have learned, to agree in advance on an apportionment of time which will give both supporters and opponents a fair opportunity to be heard, which will ensure consideration of the important clauses in a bill, but which will none the less prevent the throwing of sand in the gears. Rules of procedure in legislative bodies exist for two purposes—first, to guard against hasty and ill-considered lawmaking; second to expedite business. The problem is to find rules that will achieve both these ends.

The decline of oratory.

The use of time-limits and time-tables has had one noticeable result at Washington and at Westminster alike. It has brought the golden age of legislative oratory to an end. The days of Pitt and Fox, and Webster and Clay, seem gone forever. When only a few hours are available for the discussion of a bill, no member can monopolize the whole time for a set oration such as these old-time thunderers delivered in their day. The orator who desires to avoid unpopularity with his fellow-members, several of whom are sitting on tenterhooks awaiting their turn, must make his deliverance short and snappy. In Congress they give a prosy member leave to print; in the House of Commons they pursue the less expensive plan of flocking out of the chamber and leaving him to cast his pearls of rhetoric at the empty benches.

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[1] Standing Order, No. 27 (a).

This is not to imply, however, that time-limits and time-tables are alone responsible for the decline of parliamentary and congressional oratory. The decline had begun before these limitations came in. Long orations are not in accord with the spirit of the age in which we live. A speech of three or four hours' duration would clear the floor in the legislative halls of any country today. And the tension upon a speech-maker, who has to hold the attention of restless members for a prolonged discourse, has also become far greater than it used to be. The longest speech made in the House of Commons since the incoming of the twentieth century was Lloyd George's famous budget speech of 1909. It took him less than three hours to deliver, but he became exhausted before the end and the House accorded him the courtesy of adjournment for a short period in order that he might regain strength to finish it.

In tones of regret men talk of this decline of oratory, on both sides of the Atlantic. But it may well be doubted whether there is any reason for regret. If legislators speak less, they probably put more thought into their speeches. If there is less eloquence, there is correspondingly more meaning to what the debaters say. Many of the old-time orations embodied an astonishing paucity of substance. Take down a volume of Gladstone's speeches, or Daniel Webster's. The ponderous phraseology will make you wonder how such utterances could ever have stirred the souls of men. *Hansard* and the *Congressional Record* may make dull reading, as most students of political science who have had to peruse them will readily testify; but they are as light literature compared to the volumes of "great orations" which now cumber our library shelves. The world has grown tired of grandiloquence. The three-hour oration, like the three-column newspaper editorial and the three-volume novel, is in total eclipse. Few converts to any cause are ever made after the first twenty minutes of argument.

The standard work on English parliamentary procedure is Sir Erskine May's *Law, Privileges, Proceedings, and Usages of Parliament,* a work which is now in its twelfth edition (3 vols., London, 1912). But mention should also be made of Josef Redlich's *Procedure of the House of Commons* (3 vols., London, 1908), Sir Courtney Ilbert's *Parliament: Its History, Constitution and Practice* (London, 1911), the same author's *Mechanics of Lawmaking,* and his smaller *Manual of Procedure in the Public Business of the House of Commons* (London, 1908). The most recent American work is Robert Luce's *Legislative Procedure* (Boston, 1922).

CHAPTER XI

ODD WAYS AT WESTMINSTER

The House of Commons needs to be impressive, and impressive it is. The way to preserve old customs is to enjoy them.—*Walter Bagehot.*

Some ancient customs and symbols.

The House of Commons is not only an impressive body, but picturesque also, which is because it retains so many ancient customs and curiosities of procedure. Most of these go back several centuries; their exact origin is sometimes so much in doubt that even the most diligent antiquarians have been unable to explain how they first came into existence. A few of them are clearly the heritage of mediæval days when the House was made up of barons by writ and knights of the shire. At any rate the world of men is always much influenced by symbols which carry back into bygone ages. In government, as in art, it is not amiss to make appeals to the imagination. So its customs and its symbols, which the Philistine of today merely looks upon as oddities and anachronisms, give the House of Commons an atmosphere more redolent of age than that which surrounds the making of the laws in any other country. The House has a glamor which is not yet a vanished pomp of yesterday.

A unique chamber.

The oddest thing about the House of Commons is its meeting place. Its chamber is unique. Legislative halls in all other countries are so planned that every member can have a seat and can sit with his face to the presiding officer. But in the House of Commons there are benches for less than two-thirds of the members. And those who occupy them do not face the speaker of the House; they face their opponents. New members sometimes do not realize that no individual seats are assigned and there are current stories of neophyte commoners making early application to the clerk in the hope of getting well placed. A first glance around the chamber gives the impression of a chapel or a huge choir stall. The subdued light which falls from overhead throws a mellowness over the place. There is an air of dignity, leisure, and comfort, intermingled with venerableness.

Searching the House.

On the morning of the day when a new parliament assembles, a quaint ceremony is gone through. In the early hours of this opening day a detachment of twelve yeomen of the guard from the Tower of London marches to Westminster. These yeomen are colloquially known as "beefeaters," which is said to be a corruption of the French *buffetier*. They come, in the picturesque glory of their Tudor regalia, each carrying a lighted lantern of the pattern of 1600. Accompanied by the lord great chamberlain, who is the custodian of the palace, they trudge through the legislative chambers and down into the rooms and caverns below, into every corner of the stately pile. In and out among the coal bins and furnaces, the wine cellars and the rubbish rooms they go—every yeoman keeping step, his eyes to the front. With their eyes to the front they are looking for kegs of gunpowder placed in some out-of-the-way corner by the enemies of the king!

Origin of this practice.

This ceremony of searching the Houses has been gone through at the opening of every new parliament for centuries. Back in the days of James I, a certain Guy Fawkes, a young Englishman who had served in the Spanish army, was hired by some conspirators to blow up the old House of Parliament. Fawkes succeeded in placing twenty kegs of gunpowder in the basement of the building, all carefully covered with kindling wood. When parliament assembled, with the king in attendance, the gunpowder was to be touched off. But too many people were let into the secret; somebody told the authorities, and Fawkes was seized in the cellar on the morning of explosion day (November 5, 1605).[1] Some time later it was ordained, as a precaution against the machinations of any future Fawkes, that the whole place should be searched at intervals, and to this day the quaint formality continues. Parliament has built itself a new abode since 1605, and there are now no unlighted caverns underneath. But the yeomen of the guard continue to make their rounds. Every inch of the palace is now brilliantly lighted by electricity; but the yeomen still carry their flickering lanterns. And when they have searched through the miles of rooms and corridors they are regaled, as of yore, with a repast of cakes and ale, ending with a toast to the king.

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[1] For more than two centuries after 1605 every fifth of November was celebrated as a public holiday in England, a day of rejoicing known as Guy Fawkes Day. Even yet it is an occasion of some festivity. There is a well known ditty:

"Remember, remember, the fifth of November,
The gunpowder treason and plot;
For I know no good reason why the gunpowder treason
Should ever by us be forgot."

Prayers.

The House opens its daily sittings with the entrance of the speaker's procession. That dignitary marches down the great aisle accompanied by the chaplain in surplice and stole, the sergeant-at-arms with his sword, and the mace-bearer with the mace. Then comes the reading of a psalm and a prayer by the chaplain.[1] As a rule there are very few members in the chamber when these prayers are being read, and visitors are not allowed in the galleries until after the chaplain has finished. This rule, no doubt, was born in the days when religious bitterness was rife—when the reading of prayers from a prayer-book might have been made the occasion of disorders on the part of Nonconformists. Members of the House face the center aisle during the reading of the psalm and then turn their faces to the wall when the prayer is being read. The origin of this curious custom nobody seems to know.[2] During prayers, by the way, the Treasury bench is always empty. It is not that members of the cabinet have less need for the chaplain's intercession than the rank and file of the Commons, but merely that they do not need to come early in order to reserve their seats.

Prayers being over, the doorkeeper shouts "Mr. Speaker at the Chair." The cry is taken up through the lobbies and corridors, thus warning the loitering members that the day's sitting has begun. The mace is in full view on the table just below the speaker. This indicates that the House is sitting as a House, not in Committee of the Whole House. When the House goes into committee the sergeant-at-arms takes the mace reverently from the table and sets it underneath, out of sight. When the House adjourns it is carried off with the outgoing speaker's procession. This mace, which figures so prominently in House procedure, is a wooden staff about five feet long, finely embel-

The mace.

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[1] It is always the 67th psalm. . . . "Oh, let the nations be glad and sing for joy, for Thou shalt judge the people righteously and govern the nations upon earth. . . . Then shall the earth yield her increase; and God, even our own God, shall bless us."

[2] It has been suggested to me by one excellent authority on the usages of the House that in the old days the members probably knelt at their benches during prayers and that the practice of turning their backs to the chaplain may have originated in this way.

lished in gold leaf. It is surmounted by a gilded crown, the symbol of royalty.

The use of the mace goes back to early mediæval days when the king attended parliament in person. Originally, as we have seen, it was his custom to be present at meetings of his Great Council, and later at meetings of the *parlementum*. When parliament divided into two Houses, the king attended sessions of the House of Lords only. If he had anything to say to the House of Commons he summoned the commoners to the House of Lords, as he still does at the opening of a new parliament. Then he instructed them to go to their own chamber and deliberate upon the matters which were within their province, especially the granting of money. But not having the royal presence with them, in their own chamber, the commoners appear to have desired some fiction or symbol of it, or at any rate some token of the fact that they were meeting by virtue of the royal command and under the king's protection. So this mechanical contrivance was devised at some uncertain date, a wooden staff with a crown on its head, and it has become known as the mace. No business is in order until the mace it placed on the table where it silently reposes till the House goes into committee or adjourns.

A Cromwellian episode.

There it has lain for at least five hundred years. Were it able to write an autobiography it could tell us a long and chequered tale. *Quorum pars fui*—it might say, for on one historic occasion the mace was itself expelled from the House. This was in 1653, when Oliver Cromwell became exasperated at the action of parliament in trying to prolong its own existence. With a troop of soldiers he hurried to Westminster, as Charles I had done, and ordered the members out of doors. Then his eye caught sight of the mace on the table. "Take away that bauble!" he bellowed, and the mace disappeared. But it was soon brought back again. The colonial assemblies of America, following the custom of the House of Commons, each provided itself with a mace, and the custom has been continued both by Congress and by the state legislatures. In the American House of Representatives the mace is a plain staff surmounted by the figure of an eagle. It is not laid on the clerk's table but stands in a marble pedestal at the right hand of the speaker. When the House goes into Committee of the Whole it is removed from this pedestal, out of view; when the House adjourns it is taken away by the sergeant-at-arms. The mace, in the House of Representatives, is said to be the "symbol of authority," but how many congressmen know how and why this symbolism originated?

The table.

The table which is used by the clerks in the House of Commons and on which the mace reposes, is a massive piece of furniture occupying most of the space between the Treasury and Opposition benches. These two benches, as has been said, face each other from opposite sides of the main aisle, one at the speaker's right and the other at his left. On the table are piles of books and documents which the ministers and their opponents utilize in the course of their speeches. On it, also, are two brass-bound boxes, one at each side. It is the practice of those who sit on the Treasury or Opposition benches to use these boxes as their pulpits. They often set their notes thereon, and thump their fists on the oak receptacles to emphasize the salient points in their utterances. Mr. Gladstone, in the course of his long career, punished both of these boxes so relentlessly that the dents made by his signet ring are there to this day, bearing tribute to the éclat with which the great commoner drove home his arguments.

The Treasury bench.

The Treasury bench, on the speaker's right, is occupied exclusively by those members of the ministry who are members of the House. If the number present exceeds the capacity of the bench, the senior ministers occupy it and the junior ministers find seats elsewhere on the government side of the House. But so long as there is room on the Treasury bench, the occupant of any ministerial post, however subordinate, has the right to a place on it, provided, of course, that he is a member of the House of Commons, which some ministers are not.[1] By an old parliamentary custom, moreover, the two members for the City of London are entitled to sit on this bench, but they never do it (unless they happen to be ministers) except on the first day of a new parliament. On that day they invariably sit there a few moments for the purpose of asserting their ancient right to do so,—and this even though they happen to be members of the opposition.

The Opposition bench.

The Opposition bench is of equal capacity, but usage does not so precisely define who shall occupy it. In general, however, this bench is reserved for the leading members of the opposition —which is a rather plastic phrase. The leader of the opposition, as a matter of practice, virtually determines who shall sit alongside him on this bench, for no one would venture to go there uninvited. Some of his chief lieutenants are always at hand; others go to the Opposition bench when their presence is desired for consultation during a particular debate. Members of a former ministry, now in opposition, are customarily seated on this bench. It is sometimes said that, being privy councillors, they have a right to be there. When the Labor ministry was in power, during the years 1923-1924, the Conservatives monopolized the Opposition bench; but the leader of the Liberals (Mr. Asquith) sometimes addressed the House from in front of it, thus asserting his title to occupy a seat on it.

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[1] That is, some of them are members of the House of Lords. Ministers are not permitted, as in France, to sit or speak in the chamber to which they do not belong. See *below*, chap. xxii.

Apart from the honor involved, there is a certain advantage in sitting on one of these benches and in addressing the House from this location. It is the only place where a speaker has something to lean upon. It is, to the House of Commons, what the tribune is to continental chambers.[1] Rather curiously there is no place in the House of Commons where a member can stand and speak face to face with all his fellow-members. At either of the front benches his back will be turned to a considerable portion of his audience. If he should go to the top back bench on either side he could then have the entire membership of the House in sight; but half the members would then have their backs turned to him. Fortunately the acoustic properties of the House are good and a speaker can usually be heard no matter where he stands.

The "official pew."

On the same level as the floor of the House, and to the right of the speaker's chair, there is a small gallery or enclosure. It is irreverently known as "the official pew." Here sit various permanent officials (not members of the House) who may be wanted by ministers during the debate. When some troublesome point is raised by an opposition speaker, the minister steps over to this enclosure and secures material for his reply. It is this practice that gives to the stranger in the gallery an impression that the ministers are merely the spokesmen of their professional subordinates.

Some eccentricities of procedure are associated with the head-

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[1] See *below*, chap. xxiv.

The hat in the House.

gear of members. Visitors to the House of Commons are surprised to see some members sitting with their hats on. The practice of wearing hats in the House of Commons is very common; it is sometimes said to be a survival from the days when barons and knights came to parliament in full armor, with helmets of steel that could not be removed. In all probability, however, the custom of hat-wearing had a less chivalrous origin, for members of the House of Lords do not habitually wear their hats during debates, although they are even more directly the descendants of the mediæval ironclads. The reason why the commoners wear their hats, while the lords do not, is simply because the House of Commons has never been provided with a convenient coatroom.[1] At any rate, the earliest engravings of parliament show the members wearing gowns and caps; then in the seventeenth century they appear with flowing capes and swords; in the eighteenth century they wore elaborate wigs, and it was not until the nineteenth that the hats appeared.[2]

But hat-wearing in the House of Commons is now on the wane. The practice is now confined, for the most part, to the relatively few members who wear silk hats (or "toppers" as they are more familiarly called), and this glossy headgear is rapidly going the way of the dinosaur and the dodo. On the other hand the custom of wearing hats in the House of Lords seems to be more common today than it used to be. Sir Henry Lucy, not many years ago, spoke of it as "quite exceptional," but at the present time the visitor to the galleries will see as many hats on the heads of lords as on those of commoners.[3]

Headgear and etiquette.

The etiquette which governs the hat in the House of Commons is well established and rigidly enforced. A member may wear his hat until he rises to speak or until he moves from one seat to another. Then he must uncover. Even if he leans forward to whisper in the ear of the member in front of him he must remove his hat. The lifting of the hat is also used as a signal to the presiding officer. It is in this way, for example, that the minister or member who is in charge of a bill moves its advancement to the next stage. When the debate seems to have died down, the speaker looks toward the minister who is in charge of the measure. The latter does not rise or speak a word; he merely lifts his hat and the speaker puts the question. The speaker also carries a three-cornered contrivance which is called a hat. He brings it with him into the House, sets it on the arm of his chair, and picks it up when he leaves. It is manifestly part of his official uniform, but it never goes on his head.[1]

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[1] The present coatroom of the Commons is located a considerable distance from the chamber and hence is inconvenient to use. The lords, on the other hand, not only have a "robing-room" but there are liveried messengers in attendance to take and fetch their belongings.

[2] See the reproductions in A. F. Pollard, *The Evolution of Parliament* (London, 1920).

[3] *Lords and Commoners*, p. 99.

How seats are reserved.

It is an unwritten rule of the House that a member (other than one who sits on the front benches) may reserve any unoccupied seat by placing his hat on it. If, therefore, a private member goes out to the lobby, the library, the smoking room, the restaurant, or the terrace, he merely drops his hat on the bench where he has been sitting and departs with the assurance that he will find the place unoccupied when he returns. Due to the relatively small attendance when routine business is under consideration, there is not much occasion for members to reserve seats in this way; but on the opening day of a new session or when an important debate is scheduled, the quest for seats becomes lively. So a good many members (especially new members) go to the chamber some hours before the sitting begins and reserve seats for themselves in favorable locations. Those who do not take this precaution may have to find seats in the lower gallery (which is reserved as an overflow place for members) or may even have to stand during the proceedings.

This method of reserving seats has had its humors. Some years ago, when the Irish Nationalists were in the House, one of their number conceived the idea of reserving enough seats for the entire membership of his party, nearly a hundred in all. So, at the grey dawn of the day on which a new parliament opened, he came to the House with a huge armful of hats and caps of varying sizes, shapes, and ages. One by one he deposited them at suitable intervals on all the best benches of the chamber. Then, when the House assembled, he passed the word to his fellow Nationalists that all the good seats were theirs for the taking. But the Tory members did not appreciate the humor of this proceeding. They protested against such trifling with an ancient tradition. Whereupon the House ordered an investigation of the whole question of reserving seats, and it was finally agreed that for the future a seat should be reservable only by the use of a member's own hat, and not by using what is termed in theatrical parlance, a property hat. Under the new regulations, moreover, a member may now reserve a seat by leaving his card on it.

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[1] The lord chancellor, who presides in the House of Lords, has a similar "hat" but he wears it atop his wig on certain formal occasions. And speaking of curious official headgear, it may be mentioned that a judge of the High Court in England also produces a "black cap" (as it is called) and puts it on his head when sentencing a prisoner to death. It is merely part of his judicial regalia, though the wearing of it is now confined to this particular occasion of extreme seriousness. There is no historical basis for the popular impression that the cap and its blackness have some connection with the death sentence as such.

The wearing of swords.

The usage of the House is friendly to hats but unfriendly to swords. No member (with one exception) may bring into the House a sword, or anything that looks like a sword, not even a drawing-room rapier such as the sergeant-at-arms girds to his belt. This prohibition recalls the days when the gentlemen of England wore swords that were sharp. During a heated debate it was not uncommon for a quick-tempered knight to reach a hand to his sword-hilt.[1] His opponent across the aisle would sometimes meet the threat by doing likewise. There are several recorded instances of members drawing sabers and starting for each other, while friends on both sides intervened to avert a duel. So the House, in one of its irritable moments, decreed that a line be drawn, a thin red line, on the matting of the center aisle, about twenty-four inches from the lower benches on either side. Then it ordered that no member, in addressing the House, should step over this line. This diminished the danger of jousts in the chamber, but members might still settle their differences by a duel in the lobby, so the House eventually forebade the wearing of swords altogether. So strict is the prohibition that when distinguished military or naval officers come to the Houses of Parliament they must unbuckle their weapons and leave them with the doorkeepers. The only exception to the rigidity of the rule is made in the case of the two members who move and second the address in reply to the speech from the throne.[2] In accordance with a custom that goes back to time immemorial, these two members may appear in

The line on the matting.

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[1] The custom of wearing swords in the House continued until nearly the close of the eighteenth century.

[2] The sergeant-at-arms wears a sword, of course, but he is not a member of the House and his chair is technically outside the chamber.

court uniform, with swords and scabbards, but only for the day upon which the moving and seconding is done. And the knightly paraphernalia, even on this one occasion, sometimes becomes an embarrassing adjunct to their carefully-prepared speeches, by getting entangled with shaky legs at critical moments.[1]

The bar of the House.

Just inside the swing-doors which guard the main entrance to the chamber is a sliding rail which can be used to close the center aisle. This is the "bar of the House" which figures so frequently in the older annals of parliament. When the House orders anyone before it, he is escorted to this bar by the sergeant-at-arms or his deputy, and on many occasions some hapless offender against the dignity or privileges of the House has been haled there for judgment. In former days the prisoner at the bar was compelled to kneel while the speaker solemnly pronounced the censure of the House or even sentenced him to imprisonment. But in 1772 the custom of requiring prisoners to kneel was discontinued by an order which provided that future offenders should receive the speaker's judgment standing.[2] Imprisonment has not been meted out by Mr. Speaker to anyone, member or non-member, for many years. The last occasion was in 1880 when Charles Bradlaugh, an atheist member-elect, raised a ruction because he was not permitted to take the oath of allegiance in his own way. In the Clock Tower there are still some detention rooms for the confinement of those whom the speaker penalizes.

Appearing at the bar.

But it is not offenders alone who come to the bar of the House. Men of all ranks and reputations have stood there at various times to be questioned by the House, or to make statements, or to plead causes, and indeed on some occasions to receive the thanks of the House for their services to the nation. The gossipy Pepys, as readers of the *Diary* will recall, once came to the bar and successfully defended his administration of the admiralty. The Duke of Wellington was summoned to the bar in 1814 that he might receive the thanks of the House for his services in the Peninsular Campaign. And fourteen years later,

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[1] Sir Henry Lucy, *Lords and Commoners* (New York, 1921), p. 97.

[2] The immediate occasion for the change, according to one authority, was the action of a certain journalist who was brought to the bar in 1771 for having published a report of the House proceedings. On rising from his knees, after being duly reprimanded by Mr. Speaker, this unabashed offender brushed the dust from his trousers and exclaimed, "What a damned dirty House!" The members did not know whether to be angry or amused.

Daniel O'Connell came there to plead for Catholic Emancipation. Many other historic examples might be given. Technically, the bar is outside the House and hence beyond the scope of the rule that no one who is not a member may utter a word within the sacred precincts. The American custom of inviting distinguished visitors to address the legislature from the speaker's dais has no counterpart in England.

The gangway.

Another term which figures in the parlance of the House is the gangway. It is a passage-way running at right angles to the center aisle. Reference is commonly made, therefore, to "the benches below the gangway," or "above the gangway." There is no rule governing where members shall sit (except on the two front benches), but the tendency is for the younger members to find seats below the gangway. This location, in any event, affords a better vantage-ground from which to assail the ministers. During the time that the Labor ministry was in power, the Conservatives took the opposition side of the House above the gangway, while the Liberals sat below it. The Irish Nationalists, in the old days, always sat below the gangway on the opposition side,—no matter which of the other parties was in power. It is a tradition of the House that the benches below the gangway can be counted upon to furnish trouble if a minister goes looking for it.

And those who have sat below it.

But in recent years the cross benches have hardly lived up to this tradition. Some of the Labor members supply noise enough, and interruptions of sufficient frequency; but they have hardly atoned for the departure of the lively delegation from Southern Ireland. For more than half a century prior to the world war these Irish Nationalists flooded the chamber with their rich and striking individuality. They provided much of the eloquence, most of the humor,—and all of the disorder. Their quickness of wit atoned for their lack of gentility. One day an absent-minded member, on finishing his speech, sat down on his tall silk hat and crushed it flat as a flounder. Whereupon an Irishman, from below the gangway, arose and gravely said: "Mr. Speaker, permit me to congratulate the honorable member that when he sat on his hat his head was not in it." Not all the humor has flown from the House even yet, but a goodly portion of it went with the signing of the Irish treaty.

When the House of Commons proceeds to take a record vote

The division lobbies.

it is not the practice to call the roll as in the House of Representatives. A "division" is ordered by the Speaker, and the House divides in a literal sense. Adjoining the chamber, with entrances from its vestibule, are two rooms known as division lobbies. When the question is put, the members are herded into these lobbies. Those voting *Aye* go to the right; those voting *No* to the left. Meanwhile, electric bells begin to tinkle in the reading room, smoking room, restaurant, and elsewhere, warning members that a vote is being taken. Six minutes are allowed before the lobby doors are closed. Then the members in each of the lobbies pass before a little desk and have their votes recorded. Ordinarily the process does not take long—about ten minutes or so. A roll call in the House of Representatives consumes nearly four times as long.

Whips and their duties.

The marshals of the House are the party whips. It is they who steer the members into the division lobbies and make sure that all stragglers are rounded up. Each political party has two chief whips, senior and junior, besides several assistant whips. The chief whip of the ministerial party must make sure that a majority is within call at a moment's notice, for a defeat in the division lobbies may spell irretrievable disaster to the ministry. The chief opposition whip, similarly, employs all his ingenuity to catch the other side napping. Both these functionaries must be vigilant, resourceful, good tempered, and tactful. They must be constantly in attendance, no matter how dreary the debate becomes, for the House may divide at an unexpected moment. It was Disraeli, I think, who once said that the functions of a chief whip were "to make a House, to keep a House, and to cheer the ministers." The description holds good today.

Pairs and pairing.

Members of all parties are under obligation to let their whips know where they can be found in case a hurry call has to be sent out. And if an important division is impending, each member is in duty bound to get himself paired. The pairing is arranged by the rival whips. Each has his list of absent members who have declared their desire to vote *Aye* or *No*. These members are then paired off, one against another, so far as they will go. The chief whip on the ministerial side holds the titular office of parliamentary secretary to the treasury and draws a salary as such, but he has no duties connected with the treasury. The three junior or assistant ministerial whips also have sinecure positions on the treasury pay-roll. They are rated as junior lords of the treasury. The opposition whips get no emolument but only honor—and the hope of a salary when their party comes into power.

Presenting petitions.

Among the present-day functions of the House, the oldest is that of receiving and presenting petitions. Originally the Commons received petitions from the people and presented them to the king. The latter decided whether the petitions should be granted. The petitions still keep coming in, although not in such large numbers, and they no longer go to the crown for consideration. A few petitions are presented at almost every sitting of the House by members whose constituents have prepared them. But they are not read to the House. The member who presents a petition on behalf of his constituents merely indicates its nature and tells how many signatures there are to it. Thereupon the speaker directs him to drop the document into a sack which hangs to the left of the chair. At intervals the contents are carried to the committee on petitions, which is supposed to examine them carefully—but never does. When a petition goes into the sack, that is the last of it. "As well might it be dropped over the terrace into the Thames."[1] Monster petitions come to the House at times, petitions bearing signatures by the hundreds of thousands. They are carried down the aisle by attendants who deposit them at the foot of the clerk's table. Sometimes they are too big for the sack, in which case, after being formally presented, they are carried out again. The whole thing is nothing but a gesture, the shadow of what was once a reality. Petitions play a small part in the House procedure of today, but the tradition of their ancient importance is kept alive by the rule which gives the filing of petitions a priority over all other business in the House, no matter how urgent.

How the House applauds.

There is no clapping of hands in the House of Commons. Applause is not given in that way. When a member desires to show his approval of something that has been said, he cries "Hear! Hear!" Others may join in the chorus until it assumes the proportions of a babel. But these exclamations do not invariably express sentiments of approval. By an appropriate modulation of the voice the words may be made to throw ridicule on what a speaker has said. "The present government has done much for Ireland," asserts a minister. "Hear, hear! Hear, hear!" comes the ejaculation from the opposition benches—which, being interpreted, means that the opposition does not believe a word of it. Interjected at just the right moment, these words are often used to puncture a swelling bubble of eloquence. The House uses other forms of vocal interruption. Groups of members join in shouting, "Order, order!" or "Retract, retract!" "Division, division!" "Resign, resign!" and so on. Sometimes, in the attempt to howl down a speaker, they keep it up until the House is in a turmoil.

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[1] Sir Henry Lucy, *Lords and Commoners* (New York, 1921), p. 106.

"Naming" a member.

The speaker of the House, in his endeavor to restore order, does not pound a gavel. He has no gavel. His only weapon is his voice. Above the commotion, he rises from his chair, puts out his hand and quietly commands the honorable gentlemen to be in order. He is usually obeyed. No member is allowed to be on his feet when the speaker is standing. Disraeli once said that in his day "even the rustle of the speaker's robe" was enough to check an incipient riot. But it has not been so on all occasions. Sometimes a speaker has had to expostulate rather vigorously. He may call upon a member to retract the unparliamentary expression which has caused the hubbub, or to apologize for some disparaging reference to a fellow member. In the event of a refusal he may order the offending member to leave the House, or in an aggravated case he may "name him."[1] When the speaker names a member his action is always followed by a motion to suspend the latter from the service of the House. This motion is put without debate and is invariably adopted. The suspension, unless rescinded, is for the balance of the session.

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[1] When addressing a member, in the ordinary course of debate, the speaker does not call him by name. Nor is any member designated in that way by his fellow members. It is always "the Honorable Member for So-and-So," or if he be a privy councillor he is referred to as "the Right Honorable Member." Members who belong to the army or the navy are always alluded to as "the Honorable and Gallant Member, lawyers as "the Honorable and Learned Member." A member with a courtesy title (see above, p. 101, *note*) is referred to as "the Noble Lord," or, in the case of a lady of rank (e.g. Lady Astor or the Duchess of Atholl) as "the Noble Lady." A member refers to one of his own party as "my Honorable Friend," to a member of another party as "the Honorable Member." The speaker addresses and refers to members in this same way except that he makes no distinction as to party affiliations. When he names a member for disciplinary purposes he says "I name Mr. So-and-So to the House."

"Spying strangers."

Although there are galleries for visitors the theory still persists that the debates of the House of Commons are secret. Visitors are merely tolerated; their right to be present at any time is not recognized by the rules of the House. This is shown by the way in which the House proceeds to clear the galleries when it wants them cleared. No resolve to go into executive session is ever presented, as in Congress. Some member of the House, usually the prime minister, merely draws the speaker's attention to the fact that strangers are present in violation of the rules. This ancient custom of spying strangers is a signal for the speaker to put the question "that strangers be ordered to withdraw," a question which is not open to debate. If the vote is in the affirmative the galleries are thereupon cleared, even the representatives of the press being ordered out. The last occasion upon which strangers were "spied" in the House was during the two-day session on proposals for compulsory recruiting (April 25-26, 1916). On this occasion not a soul was permitted within earshot except the members of the House, the clerk, and the sergeant-at-arms. But the clearing of the galleries, it ought to be added, takes place on rare occasions only; there have been only three of them during the past fifty-five years.[1]

How the House adjourns.

Congress does most of its work in broad daylight; the House of Commons prefers the hours of darkness. It often sits late, sometimes very late. Occasionally it sits all night without adjourning. But its sittings ordinarily come to a close at midnight or thereabouts, whereupon the principal doorkeeper steps forth a pace or two into the lobby and in a strident voice calls out, "Who goes home?" The policemen in the corridors spring to attention and echo, "Who goes home?" Through the library, the smoking room, the side-corridors, and even along the terrace by the Thames, the cry resounds, "Who goes home?" Ministers and private members gather up their papers and drift down the center aisle through the swinging doors while the chorus of "Who goes home?" pours into their ears. Thus the Mother of Parliaments goes home.

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[1] In 1870 during a debate on sexual diseases; in 1878 when the murder of Lord Leitrim (an Irish landowner) was under discussion; and in 1916. On the first two occasions the newspapers printed summaries of what went on, these summaries being probably supplied by members. But in 1916 this danger was forestalled by a regulation issued under the Defence of the Realm Act. Michael McDonagh, *The Pageant of Parliament* (2 vols., New York, 1921), Vol. II, p. 194.

A relic of old London

More clearly than anything else among the odd ways at Westminster this cry brings back the London of Pepys and Wren and Defoe. From Westminster to London in those days was a lonely jaunt and the way was not safe for travel by night. The streets of the intervening parishes were policed, to be sure,—but only by tippling constables who spent most of their time in the alehouses. Thugs and roysterers roamed the poorly-lighted roads, and did not hesitate to set upon lone wayfarers, whether in vehicle or afoot. So individual members of the House did not dare go home alone, and it became the practice to send squads of well-armed "beefeaters" from the Tower to escort those who were ready to leave before the sitting adjourned. As each squad arrived, its commander notified the doorkeeper and he sounded the call, "Who goes home?" Those who were minded to go had the opportunity. Or, if they chose to remain a while longer, the call would be reiterated when the next squad from the Tower arrived. Westminster has become engulfed in Greater London and there is no safer city anywhere, hence the practice of sending armed escorts has long since been abandoned. But the doorkeeper and his fellow-attendants still do their vocal part, even as their predecessors did it three hundred years ago.

"The usual time."

As a parting word to the members as they file out the doorway, the attendants keep shouting: "The usual time tomorrow, Sir"; "The usual time tomorrow." But why should the commoners need this reminder? Everybody knows that a quarter to three o'clock in the afternoon is the usual time, for it is fixed in the standing orders, and if perchance there were to be any departure from it, every morning paper in London would headline the fact. The members of today need no reminder as they leave the House, but there was a time in bygone centuries when they had neither standing orders nor newspapers to inform them. So the attendants assumed the admonitory function and no one has ever prevailed upon them to give it up.

Members of the House cannot resign.

In the United States, when a member of the House of Representatives desires to resign, he merely hands his written resignation to the speaker. The speaker may thereupon issue a call for a special election to fill the vacancy. But a member of the House of Commons is not permitted to resign in this direct and simple fashion. According to a rule which dates back to 1623, no member can resign his seat. Having been drafted for service by his constituents, he must continue as their representatives until the existing parliament comes to an end. This rule, of course, is a heritage from the days when service in the House was regarded as a burden to be unloaded at the first opportunity. Today, although the privilege of serving in the House is eagerly sought by Englishmen of all ranks, the old rule against resignations persists unaltered.

Yet there are practical considerations which make it desirable to relieve an individual member from further service when he insists upon it, and a roundabout way of doing this has been devised. It is provided by the Placemen Act of 1705. By the provisions of this act any member of the House who accepts an office of profit from the crown is forthwith disqualified from further service.[1] The intent of this statute was to safeguard the House against the virtual bribery of its members by the king, whose habit it was to bestow lucrative sinecures upon influential commoners, thereby making them subservient to the royal influence. They became placemen and pensioners of the king, ready to do his bidding in the House. But parliament became concerned at this impairment of its freedom and eventually decreed that the member who went on the royal payroll must *ipso facto* vacate his seat. This put an end to one method by which the king could control the nation's lawmakers.

They "take the Chiltern Hundreds."

Now it happens that there is an ancient office in the gift of the crown, known as the stewardship of the Chiltern Hundreds. The Chiltern Hundreds are a tract of land in the county of Bucks. Once upon a time this land belonged to the king and was rented to tenant farmers, the rentals being collected by a crown steward. But the land was divided and sold to private owners long ago, hence there are now no rentals to collect. Nevertheless the office of steward has never been abolished. It has been kept in existence for the sole purpose of providing a means of exit from the House of Commons. When, therefore, a member desires to vacate his seat, he applies to the chancellor of the exchequer for appointment to this nominal post. The request is always granted; a warrant is issued appointing the member to be steward of the Chiltern Hundreds during his Majesty's pleasure, and notice of the appointment is duly inserted in the official gazette. The speaker thereupon takes cognizance of the fact that the member has disqualified himself by being appointed to an office of profit in the gift of the crown and accordingly declares him disqualified.[1] This done, the newly appointed steward of the Chiltern Hundreds retains his royal sinecure "during pleasure"; that is, until some other member desires freedom from service in the House.[2] When a London newspaper announces, therefore, "that the member for Midlothian is going to take the Chiltern Hundreds," this is merely a parliamentary way of saying that he is going to resign.

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[1] For an amendment relating to members of the ministry, see *above*, p. 70.

An odd circumlocution it may seem, and an altogether superfluous one. From time to time some Englishmen have thought it so. More than a hundred and fifty years ago a distinguished statesman asked leave to bring in a bill enabling a member to vacate his seat by merely handing his resignation to Mr. Speaker, but the House resented the proposed innovation and by a decisive vote refused to allow even the introduction of the measure. Could one find a better illustration of that loyal adherence to ancient customs which is so characteristic of parliament? The House enjoys its old customs, and that is the way to preserve them.

How the House dissolves.

For many centuries it was the custom of the king to dissolve parliament in person. With glittering array he came in a state coach to Westminster, mounted the throne in the House of Lords, and read his speech of dissolution. But nowadays parliament is usually dissolved by commission. The crown appoints five lords commissioners (among whom the lord chancellor is always included) to perform the duty. These commissioners, in scarlet robes, take their places on a bench in front of the great throne in the House of Lords. The faithful commoners are then summoned to the red chamber and the lord chancellor reads the king's speech to the assembled gathering. It is always a perfunctory deliverance, thanking parliament and announcing that the work for which it was called has been completed. When the commoners have heard it they go back to their own chamber and make ready to leave. There are no votes of thanks to everybody for everything, as in American legislatures. There are no speeches laden with an exchange of compliments. There is no presentation of a gold gavel or an illuminated address. The speaker, rising from his place, walks backward down the wide aisle between the benches, bowing solemnly to his empty chair.[1] The sergeant-at-arms, with the mace on his shoulder, paces slowly after him. Ministers and members, forgetting their political animosities, gather in groups to say good-bye and to wish each other good luck in the coming election, for a general election always follows a dissolution. The cry of "Who goes home?" again resounds through the vaulted halls as the members pass the portals and are whirled away in the motors that stand chugging in line outside. Who goes home? Some of them have gone home to stay there, for the close of a parliament always marks the end of many political careers.

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[1] The warrant gives the appointee "all wages, fees, allowances and privileges" connected with the office. There are, in fact, no fees or emoluments of any sort—but that makes no difference.

[2] But what if two or three members should happen to want to leave the House at once? In that case there are some other sinecure appointments, notably the stewardship of the Manor of Chipstead, which can be utilized in addition to the Chiltern Hundreds, and occasionally they have been brought into service.

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[1] This odd custom is said to hark back to the time when the House met in St. Stephen's Chapel. In those days the speaker bowed towards the altar. The altar is there no more, but the bowing continues. The members of the House, when they enter or leave the chamber during the regular sittings, also bow towards the speaker's chair. Similarly, in the British Navy, every officer or man who sets foot on the quarterdeck of a war vessel salutes,—because in the old days a sacred image or picture was always placed on the quarterdeck. This same tradition has been inherited by the American Navy.

CHAPTER XII

PARLIAMENTARY FINANCE

This House will receive no petition for any sum relating to the public service, or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the consolidated fund or out of money to be provided by parliament, unless recommended from the crown.—*Standing Orders of the House of Commons,* No. 66.

Importance of money bills.

It is a fundamental principle of sound public finance, and one which is nowadays generally recognized in all civilized countries, that no taxes shall be levied or expenditures authorized without specific action by the representatives of the people. This principle has had an ostensible observance in England for many centuries, but it has only been strictly observed since the accession of William III. Revenue and expenditure are by far the most important matters that come before legislative bodies, and there are very few important projects of lawmaking which do not, directly or indirectly, affect the interests of the taxpayer. It is not surprising, therefore, that money bills should take up a large portion of the time which the House of Commons devotes to its work. These measures, indeed, are regarded as sufficiently important to have a special procedure of their own.

British procedure: 1. The Treasury.

The pivotal point in British national finance is the institution known as the Treasury. It is the lineal descendant of the old Norman exchequer or revenue bureau of the king. Ostensibly the British Treasury of today is officered by a board, the Treasury Board it is called, consisting of a first lord of the treasury (who is usually the prime minister), the chancellor of the exchequer, and several junior lords of the Treasury, all of whom are members of parliament and of the ministry. In addition there is a parliamentary secretary and a financial secretary who are also members of the ministry. And, finally, there is a permanent secretary to the Treasury who is not a member of parliament, or of the ministry; but is the head of the civil service.

Now although the Treasury Board is constructed in this plural fashion it is not really a board at all. Its members never meet or perform any collegial functions.[1] The first lord, although he is titular head of the board, does not concern himself with its work unless some emergency arises. The junior lords and the parliamentary secretary are purely political officers. All the functions of the Treasury Board are performed in its name by the chancellor of the exchequer who is a member of the cabinet and one of the most influential members of that body. The financial secretary is his assistant in parliament and in administration. It is the chancellor's function to regulate the public income and expenditure, to propose changes in taxation, or any measures affecting the public debt, to keep the various public services in funds, to control the currency, and to supervise the banks.[2] The Treasury provides the money for carrying on every branch of the administration, hence its actual head (the chancellor of the exchequer) must keep in touch with them all. And this keeping in touch has developed into a considerable measure of supervision and control over all the government departments.

A curious anomaly.

The Treasury Board provides, therefore, a good illustration of the gap which so often intervenes between the nomenclature and the facts of British government. Nominally it is a board of five or six members, headed by a first lord. But its functions have been wholly transferred to a single official, the chancellor of the exchequer, a minister who occupies an ancient and originally a very humble office but who step by step has gathered almost the whole financial authority into his own hands. The chancellor of the exchequer is the British minister of finance in everything but name. His office is the center around which the whole financial system revolves. But the chancellor acts always in the name of the Treasury Board and all his instructions to the various departments go out in the name of the "Lords Commissioners of His Majesty's Treasury."

2. Preparation of the estimates.

The initial step in the financial work of parliament is the compilation of the estimates. In the autumn of each year a circular is sent by the Treasury to all the civil departments asking them to furnish figures concerning their probable requirements for the fiscal year beginning April 1 next.[1] Thereupon the financial officers in the various departments put their pens to paper and when their estimates are ready send them down to the Treasury. They must be made in a form prescribed, on uniform sheets, and in considerable detail. They must be accompanied by explanations of all increases over the estimate of the preceding fiscal year. All fixed charges, or charges upon the Consolidated Fund such as interest on the national debt, the civil list, the salaries of judges and of the comptroller and auditor-general are not inserted in the estimates but are figured separately. More than one-third of the entire national expenditures are in this category. As for the controllable expenditures there is a general understanding that if a department desires a substantial increase in funds for any of its activities, it will consult with the chancellor of the exchequer or with his subordinates in the Treasury before including the amount in its estimates. In this way the Treasury has something approaching a veto upon departmental increases even before the estimates are made ready for parliament. If a disagreement arises between the chancellor of the exchequer and the head of any department concerning a proposed increase the matter is referred to the prime minister, or to the whole cabinet for adjudication.

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[1] To this statement there is a single exception. The members meet on one occasion, when a new ministry is formed, for the purpose of "calling in," or appointing the various secretaries.

[2] Henry Higgs, *The Financial System of the United Kingdom* (London, 1914), p. 81.

3. Conferences on the estimates.

When the estimates are all prepared, and are in the hands of the Treasury, the first step is to have them checked up with the figures of the preceding year. Numerous conferences then take place between officials of the Treasury and officials of the various departments with a view to getting reductions by mutual agreement. Meanwhile figures of probable revenues are prepared by the various departments to the best of their ability, and when the total estimates have been footed up it is usually found that more money is asked for than can be provided by the existing taxes. Hence it becomes necessary to insist upon reductions of expenditure wherever this can be done with the least detriment to the public service, or else to find some new sources of revenue. The chancellor of the exchequer makes up his mind as to the wisest course and then lays the situation before the cabinet. The cabinet, after hearing his recommendations and after a full discussion of the various problems involved, authorize the chancellor to lay his estimates and proposals before parliament, with such modifications as may have been agreed upon.

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[1] The estimates for the army and the navy do not go to the Treasury but are approved by the chancellor of the exchequer personally.

4. The budget speech. The estimates of expenditure, however, do not have to wait until all questions relating to the revenue are passed upon by the cabinet. They are presented to the House of Commons as soon as they have been approved, and preferably at the very opening of the session. A little later the chancellor of the exchequer makes an elaborate "budget speech" to the House in which he reviews the finances of the past, the revenue, the expenditure, the national debt, and the surplus or deficit. This review serves as a prelude to a more detailed statement of the financial program for the current year—particularly as regards new taxes, or increased taxes, or reduced taxes. Of old this budget speech was an all-day affair, but in recent years it has been much abridged and most of the figures that formerly rolled from the chancellor's tongue, hour after hour, are now given to the House in printed form. The budget speech, it may be mentioned, is made to the House sitting in committee of the whole.

5. The House "in supply." For several weeks the House devotes a large portion of its time to this financial program, approving the estimates and providing the funds. When debating the estimates it sits as a committee of the whole House "in supply"; when providing funds it sits as a committee of the whole House "in ways and means." Hence the terms House in Supply and House in Ways and Means, as they are colloquially used. The estimates are presented in sections and each section is taken up in "votes" or groups of items.[1] Amendments may be offered to strike out or to decrease any item; but no increases or new insertions can be proposed except by a member of the ministry, for a standing order of the House (quoted at the head of this chapter) stipulates that no proposal of expenditure can be considered unless it is made in the name of the crown, and only a minister has authority to speak in the crown's name.

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[1] The financial secretary of the Treasury brings in the civil estimates; the secretary of state for war is responsible for presenting the military estimates, and the first lord of the admiralty for the naval estimates.

6. Changes made by the House.

Occasionally, however, if good reasons have been shown during the discussion, the minister in charge of the estimates will himself propose an increase or a new item, but in general the influence of the House is restricted to eliminations and reductions only.[1] In practice, moreover, the House accomplishes very little by way of revision downward, for when the ministers decline to accept a reduction they can summon a majority of the House to stand by them as a matter of confidence. On minor items the ministers often give way, but on important ones they usually stand their ground. The result is that the estimates go through with no drastic alterations and in a remarkably short space of time. The opposition concentrates its fire upon a relatively few "votes" and permits the rest to go through without debate. The principal end achieved by these budget debates is not a reduction of proposed expenditures but a general airing of grievances and a wide-ranging review of administrative policy. If any member of the opposition is dissatisfied with some action of the Home Office, for example, he bides his time until the estimates for that department are reached. Then he moves a reduction and uses this motion as a cover for his attack. But in any event the debates in Supply (exclusive of those on the supplementary estimates) must be concluded in twenty days. All votes become subject to the closure at the expiration of this time limit.

7. The revenue and appropriation bills.

When the estimates have all been voted by the House in Supply, and the various revenue proposals have been approved by the House in Ways and Means, the whole is then embodied in two bills, a revenue bill and an appropriation bill.[2] Both are thereupon put through the usual stages and passed by the House.

The House of Lords has no power to amend or reject such bills.

After the House of Commons has finished with the revenue and appropriation bills they are sent to the House of Lords, but the upper chamber has now no alternative but to pass them without amendment. This limitation, it will be recalled, was established by the Parliament Act of 1911. If the Lords, having received a money bill at least one month before the end of the session, should neglect to take affirmative action the bill goes forward for the royal assent without their concurrence. This assent is a mere matter of form, and when it is given the appropriations become available to the various departments, and the Treasury proceeds to raise the revenues that have been authorized.

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[1] By a ruling of the speaker no motion may be made to reduce the amount of a grant-in-aid. For a discussion of grants-in-aid, see Sidney Webb's *Grants in Aid* (London, 1920).

[2] A tax, once levied, remains permanently in existence unless otherwise provided in the act levying it. This is true both in Great Britain and in the United States. Some important British taxes, however, are specifically limited to a single year and have to be re-enacted at each annual session—notably the income tax.

Votes on account.

While all this procedure is going on, however, money must be had for the various public services. To meet this need the House of Commons passes various "votes on account," in other words it grants sufficient funds to carry the various departments along until the annual appropriations become available. These votes on account are lumped together in a bill known as the Consolidated Fund (No. 1) Bill which is enacted early in the session. This bill also provides a sufficient grant of money to cover any deficits that may have been incurred during the previous fiscal year.

The centralization of responsibility for British national finance.

It will be noted from the foregoing outline that the British national budget is framed, presented, debated, and passed in two divisions, one dealing with expenditures and the other with revenue. But both divisions emanate from the same source, namely the cabinet, and they are considered by the same body, that is, by the House of Commons sitting in each case as a committee of the whole House under two different names. The essential unity of the British financial system arises from the fact that the cabinet is responsible for preparing the entire budget, responsible for what it contains, and responsible for getting it adopted by parliament. The concentration of financial responsibility is complete, which is not yet true of budget procedure in Congress despite the marked progress which has been made during recent years.

Comparison with American procedure.

In the United States the estimates of expenditure are compiled by the director of the budget from figures submitted to him by the various departments. The director of the budget transmits these estimates to the President who, in turn, forwards them to Congress with his recommendations. Thus far the British and American procedures are substantially alike, inasmuch as the executive in both countries takes the initial step and submits to the legislative body a general plan of national expenditures. But there the parallel ends. In the House of Representatives the estimates go to a committee on appropriations which may recommend changes in them at will, either up or down, and from this committee they go before the whole House which has an unrestricted right both by law and by usage to increase, decrease, insert, or eliminate. There is no rule, as in the House of Commons, that additions may only be made on recommendation of the executive. And after the House of Representatives is through with the estimates the Senate of the United States (unlike the House of Lords) takes them in hand, making such further changes as it may desire. In a word there is no such executive control over financial measures in Congress as is exerted by the British ministers in parliament, and hence there is no such complete fixation of responsibility.

There is a further difference. In Congress proposals for raising the necessary revenues sometimes come from the President,[1] but they may also be brought forward by any member of the House on his own initiative. And in either case they are considered by a different committee from that which handles the appropriations. Expenditures are handled by one set of men, and revenues by another, each working separately. The chairmen of the two committees confer frequently, and a certain amount of team play is secured; but there is a good deal of room for work at cross purposes. Finally, it will be noted that in parliament, when appropriations or revenue measures are under discussion, the heads of the executives departments are present to explain, defend, and answer questions. In Congress this is not the case. The head of a department may be asked to submit explanations in writing, or to come in person before a congressional committee; but he does not appear before the whole House and is not responsible to it.

Defects of the British procedure.

All this does not mean, however, that the British budgetary system, taking it as a whole, is necessarily superior to the American. On the contrary there are some respects in which it is inferior. Concentration of responsibility is an excellent thing in its way; it makes for economy in public expenditures, but it inevitably involves a concentration of power. In Great Britain the cabinet, not the House of Commons, is the body which really controls the finances of the realm. To this it will be replied, of course, that the cabinet is merely the agent of the House and is responsible to it; but the fact remains that the House cannot insert or increase any item. It can only reduce, and even this it cannot well do unless the ministers acquiesce. To reduce an estimate against the will of the ministers would be to drive them from office. On the other hand it is only fair to state that the ministers do not usually press the issue to this point. They are, in fact, quite sensitive to the general opinions of the House and do not usually submit proposals which are sure to arouse antagonism among their own supporters. Even on the floor, after the proposals have been presented, they sometimes give way. With due allowance for ministerial sensitiveness and courtesy, however, the English cabinet is the real controller of the national purse. And as James Madison once said, they who hold the purse control the government. If the British budget were put directly into effect as soon as it has been approved by the cabinet, without going to the House at all, its final figures would not be appreciably different. But in that case the opposition would be deprived of what is now its best opportunity for launching its criticisms against the ministers.

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[1] The usual procedure is for the secretary of the treasury to submit his recommendations to the President or to include them in his annual report which goes to the speaker of the House.

Gives too much power to the cabinet.

It should be noted, of course, that the rule against inserting new items in the estimates, or increasing items already there, is one which the House of Commons can repeal at any time. It is merely a self-denying ordinance which the House in its wisdom imposed upon itself more than two centuries ago and which it can abolish if it ever makes up its mind to do so. But there is no probability that it will ever do anything of the sort, for the rule is one which most Englishmen (and many American students of government, also) look upon as highly beneficent in its operations.

Deadens the interest of the individual member.

But in any event the fact that private members cannot insert or increase any item causes many of them to lose interest in the budget. Why should they display any concern over figures that have no relation to their own constituencies? So, night after night, when the House is "in Supply," the chamber remains half empty. As an Irish member once complained, it is "overrun with absentees." It is hard to imagine anything more dreary than these "debates"—dreary for everybody except the minister who is putting his items through and the few opposition critics who are nibbling at him. The ministers can well sit snug, for they know that time is on their side. When the twenty days are up the estimates must be voted on, and they have the votes to put them through. Hence, although the discussions in supply appear to an onlooker to be conducted in a most leisurely manner, the estimates are really put through the House under much greater pressure than is the case in Congress. Sometimes half the entire esimates go through at Westminster in a single day—the last day. This means that millions are voted without any parliamentary discussion at all. It is a fair criticism of the British House of Commons, and one often voiced by its own members, that inadequate discussion is devoted to the financial problems of the realm and that much time is wasted in providing safeguards against dangers which may have existed two centuries ago but are wholly non-existent now.

Attempts to improve it.

The House of Commons has long appreciated the need for some alterations in its financial procedure. A dozen years ago it created a Select Committee on Estimates to go over the proposed appropriations before they came up in the Committee of the Whole House and "to report what, if any, economies consistent with the policy implied in those estimates should be effected therein." But when the world war came upon Europe this select committee was literally swamped out of existence by the huge increase of expenditures. Later the House ordered that further study be given the matter and appointed a committee on national expenditures to work out a plan whereby the estimates might be assured of more careful consideration. This committee made various recommendations, and although these have not yet been adopted one of them is particularly worth noting because it indicates where the financial procedure of parliament is avowedly weak. This is the proposal that amendments offered by members, when the House is sitting in supply, should not be treated as hostile to the ministry, or as involving any want of confidence in it, but that the House should be free to disregard party lines in voting on such amendments. This, of course, would greatly weaken the cabinet's control over financial measures in parliament and would undoubtedly lead to the making of many changes in the estimates which the ministers, under the present usage, would never tolerate. The proposal received much favorable comment, both in the House and outside;

but it was not adopted.[1] As the English system now stands, therefore, it provides a unique concentration of responsibility for expenditures but it virtually deprives parliament of authority which, according to the theory of representative government, it ought to possess. Therein lies its fundamental weakness.

The control of disbursements.

When the appropriation and revenue bills have been duly passed by parliament, and have received the royal assent, it is the function of the Treasury to carry them into operation. Practically all the national revenues, whether from customs, excises, death duties, income taxes, or such national services as the post office, go into a repository known as the Consolidated Fund.[2] This fund is kept on deposit in the exchequer account of the Bank of England, from which it is checked out to the paymaster-general who distributes it in payment of salaries and bills. Before any transfer of money to the paymaster-general is made, however, it must be approved by the comptroller and auditor-general, an officer of high standing who is independent of the Treasury and responsible to parliament alone. His duty is to make certain that an appropriation to cover the same has been duly made by parliament and that this appropriation has not been already exhausted. Most of the expenditures are voted by parliament annually, but various fixed expenses, such as interest on the national debt, the civil list, together with the salaries of judges, the comptroller and auditor-general, and the speaker of the House of Commons are by statute made a regular charge on the Consolidated Fund and do not have to be voted annually. All appropriations are still made "to the crown" as they were in the Middle Ages. But they are earmarked for the use of specified departments or services, and it is not within the power of the crown to divert the money to other uses. On the other hand the spending of an appropriation is not obligatory. The Treasury can withhold an expenditure after it has been authorized and leave the money unspent.

How emergencies are handled.

In view of the fact that all the financial needs of the government for the fiscal year are embodied in a large appropriation bill and passed by parliament during the course of each fiscal year it may well be asked: How about the unforeseen needs which must inevitably arise after parliament has made its appropriations and is no longer in session? How are unexpected and urgent calls for military or naval outlays met? There is an element of flexibility in the British financial system which permits the government to take care of such emergencies. In the first place the regular estimates contain, in the case of each department or service, an allowance for unforeseen contingencies. This allowance varies with the nature of the service, being a good deal larger in some than in others. From long experience in the preparation of estimates each department is able to figure out a sum that may reasonably be expected to cover things unforeseen and unexpected. Then there are certain funds, distinct from the Consolidated Fund, which can be drawn upon by the Treasury when emergencies arise either at home or abroad.[1] It is required, however, that all advances from these funds shall be reported to parliament and repaid out of the appropriations of the next fiscal year. Furthermore it is provided in the annual appropriation act that if a necessity shall arise for incurring military or naval expenditure not covered by specific appropriations and which cannot without detriment to the public service be postponed until provision can be made for it by parliament in the usual course, the Treasury may authorize such expenditure out of any surplus funds available at the moment in the same department. There are occasions, however, when the emergency is too great to be met by any or all of these provisions; in that event parliament must be hurriedly summoned and asked to make new appropriations.

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[1] Meanwhile, in 1919, however, the House tried the experiment of submitting the estimates to a standing committee before taking them up in the committee of the whole, but found that the only result was to delay business without securing any substantial economies.

[2] There are certain exceptions. The revenues from a few designated sources are kept in special funds.

Transfers of appropriations:

1. In America.

In the United States, when Congress appropriates money for the use of the various departments and services, the heads of these departments are permitted to use their own discretion in spending it, provided, of course, that they keep within the stipulations as to the use of the money which Congress lays down. Money voted for the needs of one bureau in a department cannot be used for the needs of another bureau in the same department, nor can funds voted for one purpose be used for another purpose even within the same bureau,—for salaries, let us say, instead of materials and supplies. Within these general bounds, however, the head of a department or bureau in the American national government has a good deal of discretion. So long as he does not exceed the total amount appropriated for salaries in a particular service he can take on and lay off subordinate officials and clerks at will (subject only to the general civil service regulations), and he may also redistribute their duties. This he may do without approval from the secretary of the treasury, the director of the budget, or any other financial authority.

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[1] The most important of these are the Treasury Chest Fund and the Civil Contingencies Fund.

2. In Great Britain.

In Great Britain the arrangement differs considerably from this. There the appropriations are arranged by "votes," which are divided into sub-heads, and these, again, into items. Parliament passes the appropriations by votes, not by sub-heads or items, leaving to the Treasury the right to transfer money from one sub-head or item to another. Parliament, therefore, is less rigid than Congress in its earmarking of appropriations for specific purposes; but the Treasury in England takes up all the slack that parliament leaves. Next to nothing can be done in any department by way of changing the details of expenditure, the salaries of clerks, or the duties of public employees without the approval of the Treasury. If the home office wants an additional inspector of constabulary, or the foreign office desires to add an additional secretary to the staff of the British embassy at Paris, a request must be submitted to "My Lords Commissioners of the Treasury" and sanctioned by them before it becomes effective.[1] No such provision for scrutinizing, checking, and controlling the interior economy of the administrative departments exists in the national government of the United States. The nearest approach to it is the work of the civil service commission which has various powers in relation to the classification and duties of public employees, but no authority with respect to their numbers or their pay. In Great Britain the paternal authority of the Treasury rests upon long usage and is not now questioned or resented by the various departments. It has the merit of providing a concentrated ministerial responsibility for the details as well as for the gross amounts of expenditure. And when retrenchment is needed it makes possible a uniform application of this policy all along the line.

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[1] As already indicated the sole directing head of the Treasury is the chancellor of the exchequer. The requests from the various departments are passed upon by his immediate subordinates but he takes the responsibility for action upon them.

British revenues.

The total revenue of the United Kingdom for 1923 amounted to about a billion pounds, or nearly five billion dollars; that of the United States totalled less than three and a half billions.[1] The chief sources of national revenue in Great Britain are customs duties on imports,[2] excises on liquor, tobacco and various other luxuries, inheritance taxes (estates taxes or death duties they are called), income taxes and supertaxes, corporations profits taxes, motor vehicle taxes, land taxes, stamp taxes on legal documents, and profits from government enterprises (the postal, telegraph and telephone services). It will be noticed that almost every conceivable source of revenue is being tapped to meet the enormous expenditures which have been placed upon the country as a legacy of the war.

Among general items of expenditure the "national debt services" bulk largest of all. Interest on this debt amounts to more than one and one-half billion dollars per annum. In the United States the annual interest on the national debt is a little more than half that sum. The British army, navy, and air forces consume another billion dollars or thereabouts. The civil services of all sorts (including old age pensions and other forms of social insurance) take nearly two billions. The increased outlay in this field has kept pace with all the others.

The national debt.

The national debt of Great Britain began to be accumulated more than two centuries ago and it has been piled up by intermittent wars ever since. The Napoleonic wars increased it several-fold, but during the rest of the nineteenth century it was kept fairly constant. At the beginning of the world war it amounted to three and a half billion dollars in round figures; today it is about thirty-seven billions,—in other words, a tenfold increase in ten years. It amounts to about nine hundred dollars per head of population. The national debt of the United States now stands at about twenty billions, or less than two hundred dollars per capita. The British funded debt created before the world war is for the most part represented by outstanding government bonds—consols they are generally called, because their interest constitutes a fixed charge upon the Consolidated Fund. These bonds do not, like the various funded obligations of the United States government, become due at any given date. They are without limit of time, but may be paid off, or refunded, whenever parliament decides.

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[1] The growth of the British budget during the decade 1913-1923 is impressive. In 1913 the total expenditures were less than £200,000,000; in 1923 they were more than five times as large. The peak was reached in 1918 when they totalled more than two and a half billion pounds.

[2] England is a "free trade country," nevertheless large amounts are annually collected in customs duties on certain specified commodities.

The Bank of England as fiscal agent.

In connection with British national finance the Bank of England deserves a word, for it is the depository of the national funds and the government's chief fiscal agent. Founded in 1694 for the purpose of providing the nation with loans it has long enjoyed not only the exclusive right to receive such government deposits as are kept in England but a virtually exclusive right, among English banks, to issue paper money.[1] Unlike the federal reserve banks of the United States the Bank of England is not subject to control or direction by a government board. The British government owns no stock in the bank and appoints none of its directing officials. Having no depository of its own it merely uses the Bank of England for this purpose as a private customer would do. It keeps various accounts there, such as the exchequer account, the paymaster-general's account, and the post office account. The bank receives the government's revenue, credits it to the proper account, and pays it out under the direction of the paymaster-general. The Bank of England also serves as a registry for consols and acts as the government's agent in paying interest upon these bonds.

Auditing the accounts.

All the financial accounts of the national government are audited in the office of the comptroller and auditor-general. This official is appointed by the crown, holds office during good behavior, and is removable at the request of both Houses of Parliament. He has no power to disallow any item of expenditure and can only report irregularities to the Treasury for such action as it may see fit to take. But the comptroller and auditor-general makes an annual report to parliament and this report (accompanied by the appropriation accounts, consolidated fund account, and certain other accounts) is referred to the standing committee on public accounts which is appointed in the House of Commons at the beginning of each session. A leading member of the opposition is usually appointed chairman of this committee. Its business is to go through the accounts, noting cases in which the appropriations have been exceeded, hearing explanations of any irregularities, and finally reporting to the House. It is the watch dog of the national exchequer.

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[1] Both privileges are enjoyed by banks in Scotland. The Bank of England's monopoly as respects both deposits and notes is confined to England and Wales. A few English banks, moreover, which had the right to issue paper money prior to 1844 have been permitted to continue in the enjoyment of this privilege. The total amount of these issues now outstanding is relatively small.

The best book on this subject is the volume on *The System of Fnancial Administration of Great Britain*, prepared by Messrs. W. F. Willoughby, W. W. Willoughby, and S. M. Lindsay, for the Institute for Government Research (New York, 1917), but mention should also be made of Henry Higgs, *The Financial System of the United Kingdom* (London, 1914); J. W. Hills, *The Financial System of the United Kingdom* (London, 1925); E. H. Young, *The System of National Finance* (London, 1915), and A. H. Gibson, *British Finance, 1914-1921* (London, 1921). An excellent brief survey may be found in Lowell's *Government of England*, Vol. I, pp. 115-130, 279-291.

CHAPTER XIII

ENGLISH POLITICAL PARTIES:

A SKETCH OF THEIR HISTORY

> Parties are inevitable. No free large country has been without them. No one has shown how representative government could be worked without them. They bring order out of the chaos of a multitude of voters. If parties cause some evils, they avert and mitigate others.—*Lord Bryce.*

Why political parties go with popular government.

England is the ancestral home of political parties as we now understand them, that is, of groups organized to promote by peaceful means their respective conceptions of the general welfare. Political parties, in this sense, are of British origin because responsible government is of British origin. Partyism and responsible government are inseparable; one goes with the other. Under normal conditions their association is inevitable. Free government without political parties may be practicable, but nowhere has the world yet found any enduring instance of it.

The choice among alternatives.

This is because the people of any country, when given the means of controlling their government, are sure to disagree among themselves. They will not be of one mind as to how the government ought to be carried on. On the other hand they will not split into an indefinite number of small groups. They will range themselves into two, three, four, five, or some other small number of factions—because there are only so many possible attitudes towards the more important political issues. It is a common saying that there are two sides to every question. In politics there are often more than two. Take the tariff, for example. You can raise it, lower it, revise it (by raising some duties and lowering others), or leave it as it is. Here is a political issue with four sides to it, and consequently it affords an opportunity for at least four groupings of political opinions. So it is with other political problems; the alternatives are reduced by the nature of the issue, or by practical considerations, to five, four, three—and frequently to two. Parties exist, therefore, because although men and women are ostensibly quite free to form their own individual opinions on political questions they nevertheless find themselves confronted with a limited number of alternatives.

A help or a hindrance?

There has been much controversy as to whether political parties are good or evil. Most of this discussion is beside the point. We do not spend our time debating whether the world would be better off if the tides did not rise and fall. We accept tidal phenomena as the inevitable handwork of the sun and the moon, and we govern our modes of navigation accordingly. And so it should be with the inevitable concomitants of democracy. We must take the thorns with the roses. The vital question is not whether political parties are a bane or a blessing, whether they ought to be retained or abolished. The real question is: Are they inevitable? If they are, how can we make them serve the best interests of democratic government? How can we make them help, not hinder, the responsibility of a government to the people who are supposed to control it? And the answer to these questions no nation will ever learn by merely ignoring the existence of political parties, or by endeavoring to conduct its government on the assumption that political parties can be left out of the reckoning. Political parties, by whatever name they may be known, should be regarded in the same light as parliaments, presidents, and courts—as integral factors in the mechanism of democratic government.[1]

The earliest parties or "factions."

Lord Bryce has said that parties are as old as democracy itself. The desire for group-expression is primeval. It began with human nature. Men have thought in groups ever since they began to think. It is sometimes said that these earliest groups were factions, not parties. That is true, for they were literally, not metaphorically, at swords' points with each other. Victory was not decided by counting heads, but by breaking them. The faction which gained the victory took all the power and all the rights. Its opponents were treated as rebels, insurrectionists. They got no quarter.

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[1] One of the most remarkable things about books on English government is the way in which they have ignored this topic. They treat party organization as something wholly outside the governmental structure. Until President Lowell wrote his *Government of England*, sixteen years ago, no book of its type contained even a summary discussion of English political parties in their relation to the actual workings of English government.

Evolution of parties in England. The student of history does not need to be reminded of the factional groupings which existed from earliest times down to the close of the Middle Ages. He has read of Pharisees and Sadducees, Patricians and Plebeians, Guelfs and Ghibellines. Perhaps it has not occurred to him that these were political parties in embryo. Their aim was to get the upper hand, to control the affairs of the community. If we call them factions rather than parties it is only because their methods were crude and violent. In mediæval England these political factions fought each other not only on the floor of parliament but sometimes on the battlefields as well. The Lancastrians and Yorkists, with their long drawn out and bitter rivalry, kept the land in a turmoil for almost a century. The Wars of the Roses were the work of politicians who had not yet learned to settle their controversies by the arbitrament of the ballot box. These wearers of the red rose and the white rose were members of rival parties, dynastic parties. So were the Cavaliers and Roundheads of the Stuart era. Today we would call them monarchists and republicans, legitimists and reconstructionists, conservatives and progressives, or some other appellations of the same type. After the death of Oliver Cromwell, and the restoration of Charles II in 1660, the Cavaliers became known as the Court Party, while the surviving Roundheads were designated the Country Party.

Cavaliers and Roundheads.

Whigs and Tories. A little later, when the supremacy of parliament became definitely established under William III, the nicknames Tory and Whig replaced the older designations. The Tories perpetuated, in large measure, the traditions and opinions of the Cavaliers or Courtiers while the Whigs did the same for the Roundheads or Country Party, but with this difference, however, that it was no longer necessary to change the monarch in order to procure a change of government. Changing the government now meant getting control of parliament, and to this task both parties began to devote their energies. Their rivalry was transferred from the battlefield to the forum. Ballots replaced bullets as the usual means of settling differences in political opinion. Yet the rivalry of the parties was no less keen than it had been in the age when a clash of arms decided the issues. Tory and Whig contested each election as though the fate of the nation depended on it. First one party succeeded, then the other. The Whigs controlled a majority in the House of Commons during the greater part of William III's reign; then the Tories replaced them and held power until 1714. Here the alternation came to an end and for the next forty-seven years the Whigs held the mastery without interruption.[1] Towards the end of the eighteenth century the Tories managed to work back into power once more, and from the close of the American Revolution to the eve of the Great Reform Act their hold was unshaken.

Political parties since the reform of parliament.

Since the great reform of parliament in 1832 the alternations in party ascendancy have been more frequent. The old nicknames Tory and Whig were discarded soon after this date and the more designatory appellations of Conservative and Liberal took their place. The Conservatives continued the Tory tradition, but in a somewhat modified form. They were the partisans of the established order and opposed most of the notable reforms which followed one another in quick succession during the years 1832-1835. The Liberals, on the other hand, championed these reforms in government, in industry, and in care of the poor.[2] As time went on, however, the Conservatives softened their conservatism, and when they came into power (1841) proceeded to do some reforming on their own account. Under the leadership of Sir Robert Peel they repealed the Corn Laws, for example, thus removing the import duties on grain and definitely committing the country to the policy of free trade. Incidentally this action split the party wide open, and when the reactionaries once more got the upper hand the free-trade Conservatives were compelled to take refuge in the Liberal camp.

The Victorian era.

It was during the mid-decades of the nineteenth century, therefore, that English party lines became defined and consolidated. Conservatives and Liberals joined issue on all the great political questions of the time. In general the Conservatives championed the prerogatives of the crown, the powers of the House of Lords, the privileges of the established church, the interests of the landowner and the industrial employer, and the cause of British imperialism. They drew their chief strength from the upper social strata of the kingdom. Yet on the whole they were not unfriendly to the worker and in early days were the advocates of factory regulation. They tended to paternalism. The Liberals, on the other hand, drew more largely from that element of the British population which has been compendiously known as the middle class, although they also brought into their ranks many industrial proprietors who had emerged well-to-do from the industrial revolution. They sought to change the existing order in government and in industry wherever it had fallen out of touch with the new conditions of life. They put emphasis on individual liberty rather than on paternalism, on human rather than on vested rights. Their economic ideal was freedom of trade and free competition. They favored the extension of the suffrage and believed that if the worker were duly enrolled as a voter all other things would be added unto him. Fundamentally the difference was that the Conservatives habitually looked upon themselves as the paternal guardians of rights which had become sanctified by tradition, while the Liberals claimed to be the party of individualism, progress, and emancipation.

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[1] This was partly due to the great genius of Walpole as a practical politician. He was prime minister from 1721 to 1742. But it was also due to the misfortune of the Tories in becoming involved in the two unsuccessful Jacobite rebellions of 1715 and 1745.

[2] For example, the Factory Act (1833), the Poor Law (1834) and the Municipal Corporations Act (1835).

Disraeli and Gladstone.

It is true, of course, that the actions of the two parties did not always square with these professions. At times the Conservatives found themselves promoting electoral reform while the Liberals opposed it—for example on the question of household suffrage in 1867. Two great opposing leaders came to the front during this period—Benjamin Disraeli and William E. Gladstone. Disraeli, the child of middle class Jewish parents, began his political career as a Radical and became an unswerving Conservative. Gladstone, the son of a knight, a graduate of Oxford, was a Tory by inheritance, by temperament, and by early allegiance; but he led the Liberal party for more than thirty years.[1] Under these two notable leaders all Britain ranged itself into two great camps and the bi-partisan system became firmly entrenched. The defeat of the Conservatives always meant the triumph of the Liberals, and when the Liberals lost an election there was never any doubt as to who had won it. There was no need for coalition ministries, and there were none during the long interval from the close of the Crimean war in 1856 to the opening of the world war in 1914.

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[1] Gladstone was one of the "free trade Conservatives" who went over to the Liberals after the repeal of the Corn Laws.

The split of 1886.

But conditions within the ranks of the two parties, during this long period, were not always serene. A considerable breakdown and realignment took place, for example, in 1886. To understand this episode it is necessary to know something about that ancient troubler in British politics, the Irish question. The task of governing Ireland, as will be shown in a later chapter, has been the most persistent and the most perplexing of all the great problems that the British parliament has had to deal with. There was an Irish problem in Plantagenet times, and it persisted under the Tudors. It was fanned into flames of rebellion under the Stuarts. The Hanoverians tried to settle it and failed. So the Irish question came full-grown into the nineteenth century and is still engaging the attention of statesmen in the twentieth.

The Home Rule issue.

Ireland entered into a union with England in 1800, giving up her own separate parliament and becoming entitled to approximately one hundred members in the British House of Commons. This union was unpopular in the southern portions of Ireland from the very outset, and these southern constituencies began to elect members of parliament who were pledged to a restoration of Irish home rule. Hence a group of Irish members, calling themselves Nationalists, made their appearance at Westminster and gradually increased in strength as the nineteenth century wore on. Under the leadership of Charles Stewart Parnell these Nationalists became, during the eighteen-eighties, an aggressive element in the House of Commons. Although a mere handful of seventy or eighty, in a House of nearly seven hundred members, they sometimes held the balance of power. And holding it, they could overturn a ministry at will. In 1885, for example, they utilized their tactical position to overthrow the Gladstone cabinet. A Conservative ministry was then installed, but being even less disposed to grant the concessions which Ireland demanded from England, it also incurred the wrath of the Nationalists and was ousted.

The Liberal defection.

So it became evident that one or the other of the two major parties would have to effect an alliance with the Nationalists, and this the Liberals proceeded to do. Gladstone, in a fateful decision, committed his party to the Irish cause. His action was not dictated by considerations of political strategy alone, for he had become convinced that the Irish cause was a just one. In 1886, therefore, he brought into the House of Commons a bill providing for the re-establishment of a parliament in Dublin. But Gladstone could not carry the whole Liberal party with him on this issue and in the end the Liberal ranks were split asunder. More than a hundred Liberal members of parliament bolted the home rule bill, went over to the Conservatives, and defeated the measure, thus forcing Gladstone out of office. This affiliation of Conservatives and Liberals-Unionists (as the seceding Liberals called themselves) became permanent. So did the alliance between the remaining Liberals and the Nationalists. The accession of the Liberal-Unionists gave the Conservative party a great revival in strength, for among the bolters were many able young parliamentarians. To the same extent it weakened the Liberals, for although they could now count upon the general support of the Nationalists, these Irish members were not always amenable to party discipline.

The new alignment.

This realignment of 1886 did not, however, destroy the two-party system in parliament. Liberals and Nationalists continued to vote together on important questions of policy; so did Conservatives and Unionists. In the case of the latter the fusion became so complete that the name Conservative fell into disuse and all the members of the coalition were commonly known as Unionists. Ministries went into office or were cast out on straight party votes; there was no third party holding the balance of power. The Unionists were in power from 1886 to 1892; the Liberals from 1892 to 1895, the Conservatives again from 1895 to 1905, and the Liberals once more after 1905. Under this regular alternation the principle of ministerial responsibility, based upon the two-party system, appeared to be functioning perfectly.

Rise of the Labor party.

Then came a new turn in affairs, caused by the phenomenal rise of the Labor party. There were Labor members in the House of Commons before 1900, but they did not belong to an organized party. Their numbers were small, and they counted for little.[1] Save in a few constituencies the Labor vote, as such, was not well organized or fully marshalled behind its own candidates.

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[1] Two Labor members were elected in 1874, three in 1880, eleven in 1885, fourteen in 1892, and twelve in 1895. See Arthur Henderson, *The Aims of Labor* (New York, 1918), p. 15.

In 1899, however, the British Trade Union Congress directed the appointment of a committee to arrange a conference of the trade unions and the socialist societies for the purpose of devising ways and means of securing an increased number of Labor members in parliament. Out of this action, in 1900, grew a federation of trade unions, coöperative societies, socialist organizations, and other bodies under the name of the Labor Representation Committee. This name, a few years later, was changed to Labor party.

Its early efforts.

The work of effecting a thorough organization of the new party was now more vigorously carried on, and at the next general election, in 1906, no fewer than twenty-nine Labor members of one stripe or another, socialist and non-socialist, were successful in obtaining seats. This group perfected a regular parliamentary organization, with its own whips and its own policy. But the Laborists did not yet rank as a third party in the usual sense of the term, for they voted on most occasions with one of the two older parties, usually with the Liberals. In the country, moreover, Labor remained a loose federation, not a unified popular party. There was an annual congress of delegates representing labor unions, trades councils, socialist societies, and other affiliated organizations, but the congress had not yet become a dominating authority and the local organizations retained a large measure of independence.

The decade preceding the war.

From the election of 1906 until the opening of the world war, accordingly, the Labor party did little more than hold its own in parliament. This was in some measure due to the fact that the party became too closely linked up with the Socialists, for although the alliance with socialism brought some recruits into the party ranks it resulted in considerable defections also. During these years the strength of the Laborists in the House of Commons was less than fifty votes, but they exerted a much greater influence upon the course of legislation than this figure would indicate. After 1910, more particularly, the Liberals had so tenuous a hold on power that they needed the support of both Nationalists and Labor members in order to retain office. For this reason the alliance between Liberalism and Labor became gradually closer. The Liberals championed, and carried through parliament, several measures of social and industrial amelioration which the Labor party had been advocating.[1] The more radical elements among the Liberals and the more conservative section of the Labor party were at one in their attitude toward various questions of social reform and it seemed for a time as if a complete and permanent merger might take place.

Party politics during the war.

Then came the war, and with it a sudden change in the orientation of English party politics. A Liberal ministry was in power when the conflict began, but it was quickly supplanted by a coalition cabinet representing all parties. The Labor party was given one member in this coalition and during the early years of the war all elements worked in harmony. For the time being, political strife was adjourned, both in parliament and in the country. But it did not remain so until the end of hostilities. Lloyd George replaced Asquith as prime minister, and after this change the old-time Liberals began to lose their strength in the coalition. More Conservatives (Unionists) were taken into it until it ultimately became, with the exception of the prime minister and a few others, largely a Unionist aggregation. Labor then withdrew its participation, and with a considerable body of dissenting Liberals created once more a vigorous opposition in parliament.

The "khaki election" of 1918.

No general election took place in England during the war. The existing parliament merely prolonged its own existence. Hence the Labor party was not able to test its strength in the country until the "khaki election" which took place about a month after the armistice. Into this campaign, however, the Labor party threw itself with unwonted zest. It set before the voters a comprehensive plan of reconstruction and placed more than three hundred and fifty candidates in the field. But the country was in an exultant mood and although the Labor party gained a few additional seats the outcome was a great disappointment to its leaders. The Lloyd George combination of Unionists and Liberals emerged from the election with a large majority in the House of Commons.

The end of the coalition and the election of 1922.

This set-back for Labor proved to be but a temporary one, however, for the alliance of Liberals and Unionists proved unable to hold itself together. In 1922 the Unionists deserted it, and as they had formed its main source of strength the coalition came to an end. Lloyd George went out of office and a straight Unionist ministry, with Bonar Law at its head, took the helm. This ministry then advised a general election and in the subsequent campaign it placed before the voters a program of old-fashioned conservatism, the keynote of which was a demand for "tranquillity." Now it is a rather significant fact that a great war is almost invariably followed by a "swing to the Right" as it is sometimes called. The electorate seems to desire a recess from excitement and a return to normalcy. An undertow, a revulsion from the idealism of the war period, gets under way. In England the Unionists got the benefit of this, and in 1922 they virtually swept the country. They came through the election with more seats than the Liberals and the Labor party put together. Nevertheless Labor made a surprising gain by more than doubling its quota of members in the House of Commons. It now became the official opposition, while the Liberals went to a place below the gangway.

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[1] The old age pensions scheme, for example, in 1911, and the minimum wage law in the following year.

The Unionist ministry of 1923.

The new Unionist ministry, although it rode triumphantly into power with a huge majority in its wake, proved to be short-lived.[1] Like most post-war administrations it was dull and unimaginative. The prime minister, Bonar Law, was a Scottish business man of recognized ability who soon became seriously ill and transferred the premiership to one of his colleagues, Stanley Baldwin. The latter found himself beset by an unusual array of difficult problems, both foreign and domestic. Among them the problem of unemployment was the most serious and in attempting to solve it the Unionists (Conservatives) met their Waterloo. The Baldwin ministry decided that the only way to deal effectively with unemployment was to abandon free trade, to impose a protective tariff, and thus to procure a revival of British industry.

Now it is a tradition of English government that when a ministry adopts any marked reversal in policy, for which it holds no mandate from the people, it should present the the issue to the voters before attempting to carry the new proposal through parliament. In obedience to this tradition, therefore, a general election was held in 1923. The Conservatives urged the establishment of a protective tariff. Both the Liberals and the Labor party clung to free trade. The outcome of the election was decisively against the tariff proposal, but indecisive as regards the forming of a new ministry, for although the Unionists remained the most numerous single element in the House of Commons, they no longer possessed a clear majority. The Laborists increased their strength in this election and continued to form the second largest party in the House.[1]

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[1] The term "Unionist" lost most of its original meaning when the Irish Free State was established,—though not entirely so because the Ulster question still remains (see *below*, p. 334). In a general way there is now no essential difference between Unionists and Conservatives, but the tendency is to perpetuate the former term rather than the latter.

Labor takes the helm.

When the House of Commons assembled after the election of 1923 the Labor leader (Mr. Ramsay MacDonald) offered a resolution declaring that the Baldwin ministry did not possess the confidence of the House. The Liberals joined hands with Labor in supporting this resolution and the Baldwin ministry thereupon resigned. Then, in accordance with the established custom, the leader of the party which had been mainly instrumental in defeating the ministry was summoned to become prime minister. Mr. Ramsay MacDonald accepted the post, formed a ministry from the Labor party, and proceeded to carry on the administration. His cabinet was under a serious handicap, however, for not having a majority of its own adherents in the House, and being dependent upon the Liberals for every day of its existence, the Labor ministry found itself unable to carry out the promises made in the party's manifesto or platform.

Its action in office.

The MacDonald ministry, nevertheless, did better than might have been expected under the circumstances. It was dominated by men and women who did not disdain to call themselves Socialists, yet Great Britain experienced no radical departure from economic individualism while the Labor ministry remained in power. This was partly due to the fact that the ministry did not control a majority in the House of Commons except by sufferance of the Liberals, and the latter were not prepared to support a radical program. But apart from this balance-wheel it was made apparent to the people that official responsibility has a sobering effect even upon men of socialist inclinations. The Labor ministry did not try to overturn things generally. Its leaders showed themselves to be men of sense and sagacity, although somewhat deficient in political experience. They realized that the Labor program could not be put into operation by a single stroke but must be accomplished by gradual stages. So they tried to hold the more radical element of the party in check and on the whole were successful in doing this.

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[1] The representation of the Labor party in the House of Commons after each election was as follows: 29 members in 1906, 42 members in 1910, 57 members in 1918, 142 members in 1922, and 191 members in 1923.

Its fall in 1924.

Here was a great adventure in English politics but not, as it turned out, a satisfactory one to anybody. It was not satisfactory to Labor because the party did not have the power to put its own measures through parliament. It was not satisfactory to the Liberals who merely formed the tail of the Labor kite. And as for the Unionists, they formed the opposition and challenged every move that the Labor ministry made. Everybody realized that such a situation could not long endure, but the country had been through two general elections in quick succession and did not want the distraction of a third if it could be avoided. In due course it became apparent that another election could not be avoided, and in 1924 the Liberals precipitated it by withdrawing the support which they had been giving the ministry. Whereupon there were no alternatives for Labor but to resign or appeal to the country. Labor chose the latter course.

The election of 1924 and the Unionist victory.

The election of 1924 was bitterly contested. The Liberals were forced into the background while a pitched battle was fought between Unionists and Labor. The Unionists, in this campaign, relinquished their demand for a protective tariff and made their appeal to the country by denouncing what they called the pro-bolshevist tendencies of the Labor party as demonstrated by a treaty with the soviet government of Russia which the MacDonald ministry had recently negotiated. In this denunciation they were greatly aided by the timely publication of an alleged letter from one of the Russian leaders, Zinoviev, which called on the workers of England to overturn the existing order as the Muscovite communists had done. At any rate the Unionists were once more triumphant at the polls. They exceeded even their own expectations and carried more seats than the two other parties put together. Labor fared much better than Liberalism in this election, the latter obtaining only a small representation in the House.

The brief interlude during which Labor held the reins of power in Great Britain threw much light upon the practical workings

Parliamentary government and parties.

of ministerial responsibility and the parliamentary system of government. It demonstrated the proposition that parliamentary government does not function satisfactorily unless a majority in the House of Commons is willing to accept ministerial leadership. Ministerial responsibility without the power to lead is an unworkable arrangement. It becomes real and effective only to the extent that a majority in the legislative body is willing to be led. We are too much inclined to look upon the parliamentary system as one in which the legislature controls the executive. It is more distinctively a system in which the legislature supports the executive. The House of Commons, when the Labor government held office, was quite willing to control the ministry but not so willing to give it support, at least not beyond a certain point.

Their future in England.

The mechanism of parliamentary government will keep running when there are more than two strong parties in the legislative body, and when no one of them controls a majority, as witness the experience of continental European countries. No doubt it would keep functioning in England under the same conditions. We must not tacitly assume that there is an insuperable difficulty in making parliamentary government function under a régime of party decentralization. But this can fairly be said, as a deduction from both English and continental experience, that it functions most smoothly when there are only two strong parties in the field. If Great Britain must reckon with a permanent division of her electorate into three political parties, no one of which is able regularly to command a majority in the House of Commons (which is by no means a strong probability), this will not necessarily compel any formal change in the mechanism of parliamentary government. But it will at least impose upon the people of Great Britain a scheme of government which in its practical workings and implications is something quite different from what they have had for many generations.

Strange to say, there is no comprehensive history of English political parties from their origin to the present day, and no special treatise which describes the English party system as such. The nearest approaches to an adequate description are the first volume of M. Ostrogorski's *Democracy and the Organization of Political Parties* (revised edition, 2 vols., New York, 1922) and the chapters on the subject in President Lowell's *Government of England* (2 vols., New York, 1909). But there are numerous volumes dealing with the history and aims of individual parties, for example, Lord Hugh Cecil's *Conservatism* (London, 1912); Keith Feiling's *History of the Tory Party, 1640-1714* (London, 1924); Maurice Woods' *History of the Tory Party in the Seventeenth and Eighteenth Centuries* (London, 1924); F. H. O'Donnell's *History of the Irish Parliamentary Party* (2 vols., London, 1912); Leonard T. Hobhouse's *Liberalism* (London, 1911); C. F. G. Masterman's *New Liberalism* (London, 1921); and Ramsay MacDonald's *Policy for the Labour Party* (London, 1919).

The student who desires to know much about the subject must get most of his material from the general political histories, the biographies of party leaders, and the manuals which are prepared for the use of party organizers.

CHAPTER XIV

ENGLISH POLITICAL PARTIES:

THEIR PROGRAMS, ORGANIZATION, AND METHODS

> The English government is builded as a city that is unity in itself, and party is an integral part of the fabric. Party works, therefore, inside, instead of outside, the regular political institutions. In fact, so far as parliament is concerned, the machinery of party and of government are not merely in accord; they are one and the same thing.—*A. Lawrence Lowell.*

What the English political parties stand for.

Political parties are organized and maintained to bring into actuality the things that they stand for. What do the English parties stand for? Or, more accurately, what do they profess to stand for? From what geographical sections of the kingdom and from what elements of the population do they draw their principal support?

A word of caution.

Before attempting to answer these questions it may be well to point out that nowhere are names more misleading than in the vernacular of political parties. We know full well that in the United States those who call themselves Republicans are not a whit more republican than those who call themselves Democrats, and that the latter are not necessarily more democratic than are the Republicans. To say that Republicans believe in a republican form of government while Democrats believe in democracy would be a simpleton's way of differentiating American political parties. Now the same is true, although not to the same extent, in speaking of English Conservatives (Unionists) and Liberals. The Conservatives are not necessarily conservative, nor are the Liberals always liberal in their attitude toward public questions. The Conservatives have sometimes championed reforms with the Liberals opposing them. Within the ranks of both these parties there are all shades of opinion. True it is that men and women who are conservative in temperament incline toward the Conservative party; but the same thing is often said of the Republican party in the United States—despite the fact that this same party not long ago elected to the presidency the most conspicuous reformer of his generation, in the person of Theodore Roosevelt. Generalizations as to what a party stands for are notoriously hard to frame—if one has a care for accuracy. Usually a political party stands, first of all, for getting itself into office and perpetuating itself there. It stands for whatever seems to conduce to these ends. It may stand for one thing in opposition, and for something quite different when in power.

Platforms and realities.

When a political party comes into power its tone invariably softens. Responsibility has a mellowing effect on men of every stripe. It makes Conservatives less conservative and Radicals less radical. The leaders of an opposition can romp among the ideals of politics but the members of a ministry must wrestle with realities. Thus it comes to pass that although there may seem to be a good deal of difference between the respective programs of the "ins" and the "outs," there are seldom any drastic reversals of policy when the one party gives way to the other. Does any one imagine, for example, that British foreign policy has abruptly altered its course with every change of cabinet? Were this the case there could not be a policy. Many years ago Mr. Gladstone, from the Opposition bench, denounced the continued British occupation of Egypt as a stain upon the national honor and a breach of international good faith. But Mr. Gladstone, when he became an occupant of the Treasury bench, did not put an end to the occupation, did not recall from Egypt a single British soldier.

There have been times when the Conservative party has justified its name, but no one with a knowledge of English political history would contend that it has always been the party of reaction, or of obstruction to progress. Under the leadership of Peel and Disraeli it was militantly progressive, like the Republican party under the ægis of Roosevelt. If you make a list of the various reform acts which parliament has passed during the past eighty years you will find that a very substantial fraction of them were introduced by Conservative ministers. The Conservatives are reformers, asserts one of their leaders, but "cautious and circumspect reformers."[1]

[1] Lord Hugh Cecil, *Conservatism* (London, 1912), p. 9.

Sources of the Conservative strength.

The personnel of the Conservative (Unionist) party almost inevitably compels it to be cautious and circumspect. It includes in its membership most of the nobility and the country squires, most clergymen of the Established Church (the parson vote, as it is called) and many ardent churchmen among the laity. It has held in its ranks all the old Tories, the business imperialists, the world-exploiters, and the militarists. It draws strongly from the professional classes, and attention has frequently been drawn to the fact that most university graduates go into the Conservative ranks. From 1885 to 1918 not a single Liberal member was elected to the House of Commons from any of the British universities. This does not mean that a university education tends to take the liberalism out of a young man, whether in England or elsewhere. It is merely that the British universities have drawn their students, for the most part, from homes which are traditionally Conservative in their political allegiance. It also means, perhaps, that most of the university graduates go, after graduation, into a social environment where the atmosphere is Conservative, and, that they are naturally influenced by it. At any rate it has sometimes been remarked that many Oxford and Cambridge men who join the Liberal party or the Labor party as undergraduates gradually drift into the Conservative ranks as they grow older and acquire social prominence. The fact seems to be that a university man's political leanings are not determined by the enlightenment (if any) which he derives from the curriculum but are largely influenced by two things, namely, the political affiliations of his parents and the position in life which he acquires after graduation.

The Conservative party has also made a strong appeal to what American politicians designate as "the interests," that is, the industrial corporations, the banks, and the liquor interests or "the beerage." It has also acquired some hold on the middle class, as it is called, including the small manufacturers, merchants, and shopkeepers although these classes have mainly been mobilized in the ranks of Liberalism. This term "middle class," by the way, although it figures on almost every page of political discussion in England, does not lend itself to precise definition. One writer has defined it as "that portion of the community to which money is the primary condition and the primary instrument of life."[1] Whatever else may be said about this definition, it has at least the merit of indefiniteness. Applied to the United States it would not leave many people outside its scope! Conservatism is also strong among the tenantry in the agricultural counties. Finally, until the rise of the Labor party, the Conservatives drew into their ranks a large number of mechanics, ordinary wage-earners in the cities, and agricultural laborers in the rural districts. Even since the rise of Labor in politics the Unionists have managed to hold a considerable element among the tradesmen and wage-earners. The size of their vote at the last general election proves this. They could not have rolled up a total vote of more than five millions without a large measure of support from those classes which the Labor party claims to represent. Indeed, it is the frequent boast of the Conservative leaders that they are backed by a larger number of labor votes than is the party which so earnestly proclaims itself to be the worker's friend.

The Liberals.

The Liberals have been more aggressively, and on the whole more consistently, the party of reform. They have always claimed to be more friendly to innovations. Liberal leaders protest that reform is a matter of conviction and principle with them, whereas it is only a matter of expediency with the Conservatives. The Liberal party is traditionally the party of free trade, laissez-faire, and individualism. It still holds firm to free trade, but it has long since discarded its allegiance to the policy of let-alone. Liberals no longer incline to the old view that free competition and non-interference will of themselves work out a remedy for a nation's ills. They have become authoritarian, as much so as the Conservatives. They do not shy at legislation of an avowedly paternalistic character, as they were wont to do in earlier days. They are willing to leave commerce alone, but not industry. They balk at protecting the manufacturer by a tariff, but not at protecting the worker by a minimum wage. They believe in individualism for the rich and in collectivism for the poor. English Liberalism has suffered an eclipse because not even the Liberals themselves know how to reconcile the inconsistencies of their political faith.

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[1] R. H. Gretton, *The English Middle Class* (London, 1917), p. 8.

The membership of the Liberal party has been drawn from a wide range. It has usually included a substantial proportion of the professional and business classes (though not a majority of them), a great many small shopkeepers and tradesmen, and a fair sprinkling of voters in the agricultural regions of the kingdom. Liberalism has always made a special appeal to the Nonconformists,—that is, to clergymen and lay religionists who are not affiliated with the Established Church. Until recent years the Liberals had a big following among the wage-earners but with the rise of the Labor party much of this has melted away. Labor has cut more heavily into the Liberal than into the Conservative ranks.

Party lines and geography.

In Great Britain, as in the United States, party allegiance is to some extent a matter of geography. Before the war, Scotland and Wales usually went Liberal. Today the Labor party has acquired great strength in the industrial areas of both these countries. The north of Ireland (Ulster) has always been stanchly Unionist. The south of Ireland would have been Liberal had it not preferred to be Nationalist and, later, Sinn Fein. In England itself there have always been areas with strongly Conservative tendencies and others just as consistently Liberal. In a general way the north of England has inclined towards Liberalism; the south to Conservatism; but to this broad statement there are some exceptions. England has no "solid south" in the American sense.

The danger of generalizing.

Now the foregoing paragraphs will seriously mislead the reader if he insists on construing them too literally. For there is hardly a single rule of English party politics that is not open to many important qualifications. Neither the Conservatives nor the Liberals have had a monopoly of all the voters in any walk of life. It must not be taken for granted that because a man is a peer, or a bishop, or a banker he is necessarily a Conservative. There are peers, bishops, and bankers among the Liberals,—yes, you will even find them in the ranks of the Labor party. On the other hand you will encounter large numbers of Conservatives in overalls, with dinner pails in their hands. Nor should anyone fall into the error of supposing that the Labor party draws its members exclusively from among the horny-handed. There is a surprisingly large delegation from the intelligentsia in Labor's ranks.

Concreteness of English political issues.

One of my friends, a very capable politician, says that every political party rests upon "a foundation of fools"—in other words it must have a substructure firmly built of men and women who unthinkingly vote with the party no matter what the issues may be. The percentage of these "party regulars" is not so large in England as in the United States. And this for the reason that in Great Britain the general elections do not usually turn on vague generalities or on appeals to party tradition but on fairly concrete and definite proposals. This is a consequence of the parliamentary form of government which ensures that general elections ordinarily synchronize with the clash of political parties on some outstanding issue. In the United States, when the time for a general election arrives, the political parties are sometimes compelled to cast about and find an issue. In England that rarely happens. It is the issue that brings about the election. As a result of this difference the party lines are less firmly drawn in Great Britain than in America. The way a man votes is there to a larger extent determined by his own attitude toward the issue or issues which made the election necessary and to a somewhat less extent by inheritance or by party tradition.

Liberals and Conservatives do not differ greatly today, because,

1. They agree on the main principles of foreign and colonial policy.

Between the Conservatives and the Liberals of today there is no great difference in political principles. Both favor the continuance of the monarchy and the parliamentary system of government. Both have accepted the British Commonwealth of Nations as an aggregation to be defended, preserved, and more closely welded together. There was a time when it could be fairly said that the Conservatives were more imperialistic than the Liberals, more belligerent in their foreign policy, and more ardent in extending the far-flung range of British power. This was notably the case during the Disraeli-Gladstone duel of fifty years ago. But if there is now any difference in foreign and colonial policy between the two older parties, it is not discernible to the naked eye. Issues of foreign and colonial policy have tended to become non-partisan. The great objectives remain the same no matter which party is in power. This has been shown during the years that have intervened since the close of the war. During these few years Great Britain has had a coalition ministry with a Liberal at its head, two Conservative ministries, and a Labor ministry. But the main currents of

British foreign policy have undergone no substantial change whatever.

2. The Irish issue is closed for the moment.

For many years the issue of Irish home rule was the chief ground of cleavage between the Conservatives (Unionists) and the Liberals with their Nationalist allies. This issue tinctured every election campaign with animosity and bitterness. But all parties, the Labor party included, have now accepted the Irish Treaty and are pledged to carry out England's part of it. For the moment the Irish question has gone out of British politics, although there can be no assurance that it is gone for good. Strongbow settled this Irish question eight hundred years ago, or thought he did. Oliver Cromwell settled it to his own satisfaction, and so did the younger Pitt. But it would not stay settled. Whether Lloyd George has done what Cromwell and Pitt failed to do is something that a future generation of historians will have to write about.

The differences that continue.

With a consensus on foreign and colonial policy, and with a lull in the Irish question, the lines of cleavage between Conservatives and Liberals are not so clean-cut as they used to be. They are of low visibility, as seafaring men would put it. Still, there are differences. The Conservatives, due to the make-up of their party, are naturally more favorable to the interests of the peerage and the Established Church, while the Liberals are more susceptible to middle class and Nonconformist influences. This divergence usually shows itself when matters affecting education come before parliament. The Conservatives have a greater friendliness toward the church schools which play a large part in the education of the English youth, and have urged that these schools be generously assisted from the public funds. The Liberals, while not demanding that public money shall be entirely withheld from private schools, have been more actively interested in the upbuilding of what Americans would call the public school system.[1] They have also been somewhat more friendly to vocational and technical education. In this respect the Liberals and the Labor party have been quite agreed.

The fiscal issue:

In fiscal matters the Liberals are consistent free traders.

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[1] The term "public schools," as used in England refers to privately-endowed and privately-managed schools such as Eton, Rugby and Harrow. Schools which correspond to the public schools of the United States are now known as "provided elementary schools." Formerly they were called "board schools."

The Labor party is also anti-protectionist. The Conservatives have coquetted with protection from time to time in recent years, but they did not come out openly for it until the election campaign of 1923. Twenty years ago, or thereabouts, a wing of the Conservatives headed by Joseph Chamberlain advocated the imposition of duties on imports, with the giving of a certain preference to the British colonies, and a split in the party seemed to be approaching. But Mr. Chamberlain dropped out of active politics by reason of ill-health and the protectionist sentiment soon lost its momentum. No more was heard about abandoning free trade until the world war was under way. Then, as part of the war program, and in order to conserve shipping space, it was decided by the coalition ministry that barriers ought to be erected against the importation of certain forms of merchandise. Import duties were levied upon a considerable list of commodities, but with the understanding that this was a measure for the defence of the realm and that the duties would not be continued when the war had come to an end.

1. Before the war.

After the armistice, however, England sailed into a heavy fog of industrial depression. Some of her great foreign markets, which in pre-war days had bought English industrial products in large quantities, were no longer available—Russia and Germany, for example. On the other hand the English market now attracted large quantities of foreign goods, owing to the favorable exchange situation. Hence many English factories had to shut down and more than two million workers were thrown out of employment. All sorts of remedial measures were proposed, but none of them seemed to meet the situation, and the Conservatives finally announced to the country that English industry could not be restored to prosperity except by the abandonment of free trade. But the people did not endorse this program at the polls and the Conservatives accepted their decision. The demand for a protective tariff disappeared from the Unionist platform. It should be explained, however, that although the Unionists have dropped protection as a general policy, they still advocate the "safeguarding of British industries," that is, the affording of protection to certain vital industries which happen to be menaced by foreign competition.

2. Since the war.

In other words the fiscal issue is not yet a dead one in England. It would seem as though it must inevitably come again to

3. For the future.

the front unless British industry can be stimulated in some other way. England's industrial competitors are protectionists, all of them. Apart from the United Kingdom, virtually the whole world has abandoned free trade. Even the British dominions impose duties on goods coming from England. This situation encourages all countries to invade the English market while holding up barriers against the buying of English goods in return. Still, the campaign of 1923 indicated that the people of Great Britain are not yet prepared to throw overboard the economic doctrines of Adam Smith. A tariff, most of them believe, might reduce unemployment and raise wages, but they feel that it would also increase the cost of living and thus leave the worker no better off than he was before. In the United States the industrial workers, by and large, have been converted to protection. They believe that they are better off with a high tariff than they would be without one. The English industrial worker has not yet been persuaded to see the matter in the same light although strong efforts have been put forth to make him do so.

The social issues.

As respects the current problems of internal policy—taxation, poor relief, social insurance, and the betterment of industrial conditions—the two older parties are separated by no great gulf. The difference is in tendencies and methods rather than in principles. Between a conservatively-minded Liberal and a liberally-minded Conservative there is not much to choose. Both favor a reduction of taxes and are opposed to a levy on capital such as Labor has proposed. Both favor the continuance of industry on an individualist basis and are opposed to the extensive plan of socialization which the Labor party advocates. Both are ready to maintain the systems of old age pensions, health insurance, and unemployment insurance which have been established by parliament. There is no great difference between them on these important matters of industrial amelioration.

The Labor party.

The Labor party, on the other hand, has struck off along new and radical lines. Its program differs from those of the two older parties not merely in tendencies and methods but in basic principles. This program is largely concerned with changes in the industrial order and is frankly socialist in character. It differs radically from the programs of both Liberals and Conservatives in that it proposes to abolish, and not merely to reform, the capitalistic system. Its professed aim is to "secure for

Its program:

every producer his (or her) full share in the fruits of industry" and to bring about the "most equitable distribution of the nation's wealth that may be possible." This it proposes to achieve by "the common ownership of land and capital, and by the democratic control of all economic activities." To this end the Labor party demands the nationalization (i.e. government ownership and operation) of railroads, mines, and power plants. It demands the municipalization of street railways, gas plants, electric plants, and other local utilities. It demands the nationalizing of factories and other means of production, not immediately, but as rapidly as is practicable. One step at a time and the private capitalist would eventually disappear. Democratic control of industry would be established and all surplus wealth would be devoted to the common good.

(a) Socialization.

The Labor party does not propose that this be done by violence or confiscation. Everyone whose factory or other property is nationalized would be paid just compensation for it. The government would buy him out at a fair price. It would then conduct the enterprises in exactly the same way that it now manages the postal service and the telegraph lines. Thus the Laborists would usher in the socialist state—without injustice to anyone, they say, and with due adherence to all the forms of law. They would substitute group control for individualist exploitation.

(b) Finance.

In the field of public finance the Labor party has had in mind a "capital levy," in other words the putting of a heavy tax not merely upon the income of the nation but on all accumulated capital. The argument is that England's enormous war debt constitutes an intolerable burden upon the nation's productive power and ought to be unloaded at once rather than liquidated by installments over a long period of years. Better take from what the nation has saved in the past, pay it off, and be rid of the incubus. But the property-owners of the United Kingdom did not see much force in this argument. They put up with a heavy tax on their incomes during the war and after it; but a levy on their capital seemed an altogether different sort of burden, the entering wedge to a general confiscation of all private property for the benefit of the masses. So the proposed capital levy aroused a great deal of opposition and the leaders of the Labor party have not thought it wise to play up this feature of their platform too prominently. During the last election campaign they kept it very much in the background.

(c) Foreign policy. As regards foreign policy the British Labor party has been solicitous for a resumption of commercial relations with Russia. During its brief term in office the Labor government concluded a treaty along this line, but met defeat before it could put this agreement into operation. All three British political parties are ostensibly ready to support the League of Nations in every reasonable way, but the Labor party appears to have a more genuine interest in the success of the League than has been shown by either of the others. As has already been mentioned, however, the main lines of British foreign policy are relatively permanent and do not undergo any appreciable change when one political party replaces another at the helm.

The two wings of the party. Now what has been said in the foregoing pages will be misleading if it conveys the impression that the Labor party is solidly united on all features of this or any other program. There are two well-marked divisions of the party, one of them strongly radical, the other much more moderate. One wing has persistently clamored for the immediate nationalization of all the agencies of production and distribution; it is virtually communist in its aims and desires to proceed by direct action, although no avowed Communist is allowed to be a member of the Labor party. The other wing has just as persistently held out against this undue haste and has proceeded on the theory that the socialization of industry is far too big an undertaking to be carried through except by gradual stages. Thus far the moderate section of the party has been in control, and it was this element that dominated the Labor ministry while it held office. As yet there has been no open rupture between the two factions of the party, but it is by no means certain that they can continue to campaign in amity under the same banner.

Labor's political program. If Labor should become firmly seated in the saddle, what changes in the structure of English government would it proceed to make? Far-reaching changes in the industrial organization there would be without much doubt; but to what extent would the political framework be reconstructed? Some years before the war, when Labor was still a relatively small factor in British politics, Mr. Ramsay MacDonald (later prime minister) set forth the political ideals of his party in an able work entitled *Social-*

ism and Government.[1] In it he argued for the reconstruction of the cabinet system, the abolition of the House of Lords, and the reduction of the House of Commons to half its present size. But in some of his later writings the Labor leader became much less definite in his program of political reform and contented himself with the suggestion that the whole question be studied by "a really able commission."[2]

The Webb plan.

After the war was over, and Labor had become much stronger in English political life, two prominent intellectuals in the party, Sidney and Beatrice Webb, put forth a somewhat more explicit and detailed plan of government reconstruction.[3] There is nothing official about this plan, and it has never been formally accepted by the Labor party. But it has formed a good basis for the discussion of Labor's political aspirations and ought to have more than a passing mention here.

Analysis of the plan.

Under the Webb plan, Britain would retain the monarchy, not because monarchy is regarded by Labor as a superior form of government but because there is much to be said for letting well enough alone. To propose any form of elective headship would only serve to concentrate discussion on this issue and side-track the rest. Monarchy and a socialist state are not irreconcilable. The House of Lords would, of course, be abolished. The House of Commons would be retained as a "political parliament" without much change in its present organization. As a political parliament it would be restricted to the consideration of purely political matters, including the national defence and foreign affairs. There would be a small cabinet responsible to the House of Commons. As at present, it would be headed by a prime minister but would include only five other ministers—for foreign affairs, national defence, justice, India, and the colonies.

The proposed "social" parliament.

Parallel with the House of Commons there would be a "social parliament" elected from single-member constituencies by the whole adult citizenship for a fixed term of years and not subject to dissolution. This parliament would have complete authority over all economic and social (as distinguished from political) matters, and more particularly it would have control of taxes, schools, poor relief and all industrial relations. It would have no cabinet responsible to it, but would do its work through standing committees. It would have committees on taxation, health, education, railroads, shipping, mining, and so forth. Each committee would have a chairman who would virtually serve as the minister in charge of the detailed administrative work. Both parliaments, be it noted, would be elected on the same basis.

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[1] Published in 1909.

[2] *A Policy for the Labour Party* (London, 1920), p. 166.

[3] Sidney and Beatrice Webb, *A Constitution for the Socialist Commonwealth of Great Britain* (London, 1920). One of the authors became a member of the MacDonald ministry in 1923. Both of them are widely known writers on political and economic questions.

Neither of the two parliaments, political and social, would be subordinate to the other. Each would be supreme in its own field. Disagreements as to spheres of jurisdiction would be decided by the courts as the interpreters of the constitution. Where a question happened to be both political and social, both parliaments would have to concur in order to obtain action. But all questions of finance and taxation would belong to the social parliament, and in the long run this would inevitably give it the upper hand.[1]

The plans of the guild socialist.

This plan for a socialist commonwealth, with its political and social parliaments functioning side by side, is not acceptable to the more radical, or guild socialist wing of the Labor party.[2] The radical Laborites argue that no mere overhauling of the existing political framework will do. There must be an abolition of the present system with its House of Commons based upon geographical representation. A new lawmaking body, a national assembly consisting of a single chamber based on vocational rather than a geographical representation, must be established in its stead. This assembly the workers would completely dominate, with no checks upon their supremacy. To put the thing in other words, the radical (or guild socialist) wing of the Labor party would abolish the existing framework of British government, root and branch, thus cutting loose from political democracy as Englishmen have hitherto understood the term, while the more moderate (or state socialist) wing of the party would take the existing political system as a basis, alter it somewhat, reinforce it, and retain the essential features of orthodox democracy.

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[1] An examination and criticism of the Webb Plan, by Professor A. N. Holcombe, may be found in the *Quarterly Journal of Economics*, Vol. XXV, pp. 431-460 (May, 1921).

[2] The ideals and aims of the guild socialists are set forth in various books by G. D. H. Cole, especially his *Guild Socialism*, *Social Theory*, and *Labor and the Commonwealth*.

Some lessons to be drawn from Labor's rapid rise in English politics:

1. Its wide appeal.

The remarkable rise of the Labor party to a position of strength and influence in British politics during the past ten years has been due to a variety of causes, some of which carry lessons which might well be taken to heart by organized labor in America. One of them is the appeal which the Labor party has made to the "white-collar man." It has not rebuffed him from its ranks. On the contrary it has welcomed professional men, educators, even peers,—anyone who accepts its creed. Thus it has drawn into its fold a large number of well educated men and women, some of whom have been given posts of leadership. It has appreciated the fact that brains, as well as numbers, are essential to success in politics.

2. Its constructive program.

In the second place the British Labor party has acquired a unifying bond other than a common enemy. It has not spent all its energy in denouncing the ogre of capitalism, in railing at profiteers, and in scenting various conspiracies to enslave the worker. It has produced a program which, whether you like it or not, is at least comprehensive, constructive, and arguably practicable. And it urges the acceptance of this program, not for the benefit of the organized manual worker alone, but for the advantage of brain workers also—for virtually the whole people and for posterity. It has adopted the language of altruism, and has couched its demands in terms of nationalism, not of class warfare. It has gone on the principle that there is a fundamental harmony in all human relations and that the best interests of the wage-earner are not in conflict with those of men who earn their livelihood by labor other than that of their own hands.

3. Its spirit of idealism.

Finally, the leaders of the British Labor party have placed their cause before the people on a high spiritual plane. They have not allowed themselves to become wholly absorbed in controversies over the open shop, the standard of living, the minimum wage, the use of injunctions in labor disputes, and the eight-hour day on public utilities. Rather they have devoted themselves to voicing the plea of the worker for industrial democracy as a means of elevating the entire plane of his life and making him a better craftsman in the new society. In this way they have reached many thousands of generous-minded people, wholly outside the wage-earning ranks, whose emotions naturally impel them towards an ideal that is stated in human terms.

What organized labor in America ought to learn from English political history.

If organized labor in America will study the political history of England during the past half-dozen years there are some lessons that it can profitably learn. It can learn the desirability of stating its aims in terms of the common good, and not in terms of labor's advantage alone. It can learn that organization is not the sole passport to success, but that leadership, intelligence, and education are desiderata of equal importance. The ranks of organized labor in America contain relatively few well-educated men, and indeed the general attitude has been rather hostile to higher education. The intelligentsia are under suspicion in American labor circles, although for no sound reason. Finally, there may well be learned the lesson of presenting labor's cause to the whole people in the form of a constructive, democratic, spiritual ideal rather than in a series of uncoördinated demands for such specific concessions as the closed shop or the right of peaceful picketing.

Party organization.

Having thus briefly surveyed the history, composition, and programs of the three major political parties in England, it is worth while to add a word concerning their methods of organization and their activities in election campaigns. For English political parties place a good deal of stress upon organization, although by no means so much as is our custom in America. Comparing England and America in this respect one might say that in England leadership counts for somewhat more, and organization for somewhat less, than in the United States.

How English parties are organized.

English party organization in the country at large, as distinguished from party organization in parliament, dates from the morrow of the Great Reform Act. Prior to 1832, when the privilege of voting was confined to a very small percentage of the people, when the process of electing a number was so often a mere gesture, there was no need for party organizations among the voters. With the widening of the suffrage, however, and the elimination of the pocket boroughs, it became apparent to the political leaders that success or failure at the polls depended on getting the new voters registered and canvassed. So registration societies were formed all over the kingdom and these gradually developed into full-fledged local party organizations. At the outset the local organizations did not attempt, save in rare

Early methods.

instances, to place candidates in nomination. This was left to individual initiative; in other words the candidates came forward of their own volition or were nominated by a few influential members of the party.

The Birmingham plan.

In the course of time, however, the local organizations began to broaden their bounds so as to include all members of the party in the ward, or borough, or county. This step was first taken by the Liberals of Birmingham during the sixties. The Liberals of each Birmingham ward adopted the practice of assembling in caucus and choosing a ward committee which, in time, sent delegates to a central association for the whole city. The general committee of this central association, representing as it did the whole body of Liberal voters in Birmingham, took over the function of nominating the Liberal candidates and promoting their election. In short, the Birmingham Liberals merely adopted the ward caucus and the city convention, thus taking a leaf from the book of practical politics in America.[1]

Its spread.

The Birmingham plan of party organization proved to be a brilliant success. The Liberals, organized on the American plan, not only swept their entire slate of three candidates into the House of Commons but captured the city council and the school board as well. Naturally this achievement was noted by the Liberals in other cities, and by their Conservative opponents also. Before long, therefore, the Birmingham plan spread over most of England. It did not do this without opposition, however, for many timid-minded leaders in both parties were afraid that it would transplant to Great Britain "all the evils of American machine politics." In this they proved to be mistaken. The use of the caucus and convention in England did not result in the domination of the cities by rings and bosses. Anyhow, when the Liberals adopted this method of organization they left the Conservatives no choice but to accept it also, as a matter of self-defence.

The next step followed logically within a short time. This was the affiliation of the local organizations into a national body. Here, again, the Liberals took the lead by organizing the Na-

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[1] The moving spirit in this procedure was Joseph Chamberlain, who was commonly known as the "American mayor" of Birmingham by reason of his having made this office a real center of influence and authority. Chamberlain was very familiar with American party organization and methods, having spent considerable time in the United States.

The National Liberal Federation (1877) and the National Conservative Union (1887).

tional Liberal Federation in 1877. It was not intended that this National Federation should exercise any control over the local associations or dictate whom the latter should nominate. The avowed purpose of the national federation was to guide, assist, and inspire the local organizations so that their work might be made more effective. The local Conservative associations remained unfederated for a time, but the merits of the plan became steadily more apparent and in the end a National Union of Conservative Associations was organized with the same avowed purposes as the National Liberal Federation although it was constructed on a somewhat different model.

Influence of these national bodies.

These two national bodies, the National Federation and the National Union, inevitably became directing factors in the work of their respective parties. Each set up a central office with a paid staff, and these headquarters kept in close touch with the local associations of all the constituencies. Sets of rules and instructions were prepared for the guidance of the local committees, and the local associations were sometimes provided with paid organizers. On the approach of an election campaign the central offices took in hand the work of raising funds for nationwide use; they supplied speakers to constituencies where they were most needed; they even adopted the practice of recommending a candidate in any constituency where no strong local man appeared to be available. This habit of recommending an outsider (usually some one who had worked valiantly for the national headquarters in a previous campaign) was not resented by the local organizations. On the contrary they often asked that a good candidate be recommended to them—preferably one able to conduct a whirlwind campaign and pay for it out of his own pocket. Not a few English parliamentarians have made their way into the House of Commons during the past forty years by the grace of a central recommendation to some fighting-ground constituency in which no local man seemed willing to give battle for the party and pay the price. By this and other means, at any rate, the influence of the central organizations continued to grow apace, and eventually two small groups of party leaders in London were exerting a strong influence upon the work of the local associations everywhere.

President Lowell has remarked that there is always a good deal of sham in the make-up of party organizations. This re-

Difference between the theory and practice of party organization.

mark applies both to England and to the United States. Ostensibly, in both countries, the local committees are made of persons chosen by the voters of the party, every voter having a voice in the selection. Ostensibly, too, the men at the party's headquarters are chosen and controlled from below. But the fact is that in both countries, and under normal conditions, party committees are self-chosen and self-perpetuating in their membership. The voters, in nine cases out of ten, merely assent to what has been cut and dried for them by the party leaders. The chief difference between British and American procedure is that in the one case this assent is given at a caucus while in the other it is more often given at a primary.[1]

Both the National Liberal Federation and the National Conservative Union have a great deal of work to do—a good deal more than the national committees of the two major parties in America. They divide this work into branches and give each branch to a committee which thereupon assumes virtually complete responsibility for getting it done. Each of these committees has its own campaign funds and its own corps of workers.

Organization of the Labor party.

The Labor party, since its reconstruction some years ago, does not differ widely in organization from the two older groups. In every constituency there is a Labor Association in which "all producers by hand or brain" are eligible to membership. They become members on payment of a small annual fee. These associations select the Labor candidate in each constituency. At fairly regular intervals a congress of delegates from these associations is called to frame a party program, and every candidate who seeks election in Labor's name is required to pledge his adherence to this program. The Labor party likewise maintains a central headquarters in London and from this office directs the coördination of party activities throughout the country. It recommends candidates like the other parties, provides speakers, apportions funds, distributes campaign literature, and does most of the work that is performed by a national party headquarters in the United States during a presidential campaign. All in all, the British Labor party is now remarkably well organized,—better, perhaps, than either of the older parties.

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[1] A caucus is a meeting in which the party voters all come together at the same time. A primary is, as its name implies, a preliminary election; the party voters come to it singly, not en masse. A caucus discusses and votes; a primary affords no opportunity for discussion.

It is better supported by its local organizations, and the canvassing of the voters on behalf of its candidates is done with more thoroughness. Its propagandist literature, too, has been of high quality and very effective.

The auxiliary organizations.

Much work in the interest of all the parties is performed by auxiliary organizations. The Primrose League, for example, is an active propagandist body in the interest of the Unionist party.[1] The Fabian Society, as every reader of socialist literature knows, has rendered great service to the Labor cause. Other political clubs, leagues and societies by the hundred are active in all parts of the kingdom. Many of them are primarily social organizations until an election looms on the horizon. Then they plunge into politics until the polls are closed, whereupon they relapse into their social routine once more.

English and American analogies.

It will be seen, therefore, that English and American party organizations have much in common. Both stand in sharp contrast with the forms and practice of party organization in France, Germany, and other Continental countries. In both England and America there is a hierarchy of committees, local and national, the latter helping and encouraging (but not openly controlling) the work of the former. In both countries there is a host of ancillary leagues and clubs, active in furthering the party cause. In both countries the activities and expenditures of political parties must keep within the bounds laid down by law. The chief difference is that England has fewer professional politicians than the United States, fewer men and women who spend all or most of their time working in the party interest and who expect to be paid for it in some way or other. There are political organizations in England, but no political machines, that is, no organizations which function with the machine-like precision of Tammany Hall. There are men who dominate the party organization in individual boroughs, especially the local organizations of the Labor party, but they are hardly entitled to be called political bosses, although some of them come close to it. The Labor party, indeed, has done a good deal to Americanize the politics of Great Britain during the past few years.

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[1] This League is named in honor of the Conservative leader, Disraeli, whose favorite flower was the primrose.

CHAPTER XV

LAW AND THE COURTS

No free man shall be taken, or imprisoned, or disseized, or outlawed, or exiled, or in any way injured; nor will we go upon him, nor will we send upon him, save by the lawful judgment of his peers or by the law of the land. . . . To none will we sell, to none will we deny or delay, right or justice.—*Magna Carta,* Sections 39-40.

Two great legal systems.

In the entire history of mankind there have been only two great systems of law, the civil law of Rome and the common law of England. Many other systems have come into existence during the intervening centuries, and some of them remain in operation today, but it is not too much to say that the legal fabric of practically the whole civilized world is derived from one or the other of these two great bodies of jurisprudence. The countries of continental Europe, the Latin-American republics, Scotland, and Japan, have followed the civil law of Rome; while England, Ireland, the United States, and the British overseas dominions have based their legal systems upon the common law.[1] Roman and Saxon differed in many things, but one thing they had in common, a genius for law and government. *Tu regere imperio populos, Romane, memento!*

A general comparison.

These two great systems of law, Roman and Common, are absolutely unlike, as anyone who undertakes a study of them will soon discover. The Roman law was developed by a people who, although intensely practical in temperament as ancient races went, had a strong penchant for order, symmetry, and uniformity. So they developed a legal system which was above all things orderly, each part consistent with the others. The mediæval Englishman was also endowed with a practical turn of mind but he inclined much less to system or consistency. So both systems of law reflect their respective traits of racial character. It has sometimes been said that Roman law is like Romanesque architecture in that its impressiveness arises from the proportions of the mass, while the common law is like Gothic architecture, its beauty arising from the variety and perfection of the details. Whether this simile is worth much I cannot say, nor are there many who can, for few men are proficient in both architecture and jurisprudence. As to the variety and intricacy of detail in the common law, however, any American lawyer can readily testify. Therein lies its strength—also its exasperation. At any rate the common law girdles nearly half the globe today, and as such it deserves more attention, even from the student of political science, than he has been giving to it.

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[1] In French Canada, there is a strong infusion of Roman law; and the same is true of Louisiana which was colonized by the French. Roman law also forms the basis of the civil jurisprudence in South Africa. There is a good chapter on "The Spread of Roman and English Law throughout the World" in Lord Bryce's *Studies in History and Jurisprudence* (London, 1901).

The common law of England.

What is the common law of England, about which Blackstone wrote in rhapsody, declaring it to be "the best birthright, the noblest inheritance of mankind"? In 1774 the First Continental Congress, meeting in Philadelphia, asserted that Americans were "entitled to it by the immutable laws of nature."[1] Why did these sturdy colonials, on the verge of a revolt against England, lay claim to the heritage of the common law? The answer, however brief it be, must carry us a long way back in English legal history.

Its origin and early growth.

Even prior to the Norman Conquest of England in 1066 certain legal customs and usages had become *common* to the whole realm or, at any rate to a large part of it. But these unwritten usages were relatively few in number and they were not always clear. From time to time, therefore, they were elucidated or declared by the dooms or ordinances which the king issued at sessions of his Witan. With the arrival of the Normans, and the strengthening of the royal authority, these nation-wide or common usages steadily increased until in time they became both numerous and complicated. When a case came before the royal justices, these judges tried to ascertain the common custom and to apply it. The decision of one judge was then followed by others, and in this way precedents were evolved. Thus there grew up, especially under the early Plantagenet kings, a body of rules which had never been ordained by any monarch or enacted by any legislative body, but which merely represented the crystallization of usages or customs. Nevertheless they were applied with the force of law by the king's judges wherever they went.[1]

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[1] Declaration and Resolves of the First Continental Congress (October 14, 1774), Resolution 5.

It became slightly tinctured with Roman law.

This laying of a broad legal foundation went on during the mediæval centuries. The royal judges and the chancellors were men with some knowledge of the Roman law and its principles naturally had some influence upon their work. It induced them to systematize and give an orderly character to the common law, so far as this was practicable. In other words the common law became inoculated with the law of Rome, thereby acquiring a certain measure of cohesion in its early stages. As time went on it became more comprehensive, more detailed, more intricate in its rules and exceptions—but it still retained its unwritten character. It was rather inclusively defined as that which had been the law and custom of the realm since time when "the memory of man runneth not to the contrary."

The commentators: Glanvil to Blackstone

Then came the next step. Jurists and commentators began to take this steadily-growing and somewhat elusive body of rules in hand. They arranged them in logical form, elucidated them, added their own comments, and thus gave the common law a better basis for further development. Ranulf Glanvil was the first of these common law expounders. In the twelfth century he compiled his famous *Tractatus de Legibus et Consuetudines Anglorum*,[2] a remarkable treatise when one takes into account the difficulties which the compiler had to overcome. Other jurists continued Glanvil's work. Bracton, about the middle of the thirteenth century, edited a larger commentary with numerous citations from the decisions of the royal courts. Then, as the centuries passed, came Littleton, Fitzherbert, Hale, Coke, and, finally, the best known of them all, Sir William Blackstone, whose *Commentaries on the Common Law of England* appeared on the eve of the American Revolution.[3]

Common law is judge-made law.

These men were expounders, not makers of the law. They explained the law as it was at the time of writing. Meanwhile the common law kept broadening down from precedent to precedent. It grew by decision and by record, not by enactment.

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[1] See Sir Frederick Pollock's *Expansion of the Common Law* (London, 1904), pp. 46-50.

[2] It is the belief of some authorities that the *Tractatus* was not entirely the work of Glanvil but mainly that of his nephew, Hubert Walter.

[3] During the past hundred and fifty years the *Commentaries* have passed through numberless editions. No other law book is so widely known throughout the English-speaking world.

Year after year the decisions of the courts fitted it to new needs and conditions. But it ceased to be *unwritten* law in a literal sense, for its rules and usages, as they grew, were put into written form by the succession of jurists named above. It was unwritten law only in the sense that it did not originate in statutes passed by parliament. It was customary law in that usages supplied its basis. It was judge-made law in that the courts had evolved most of it.

Its migration to America.

Age gives dignity to law as to institutions. The people of England gloried in their common law; they regarded it as a shield and buckler against the royal oppression, which in truth it was. So when Englishmen migrated to America in the seventeenth century they brought the common law with them just as they brought the English language. To them it was an Englishman's heritage, an assurance of his rights wherever he might go. It was a code of individual liberties, a body of traditional, fundamental law, not to be changed at the caprice of kings or parliaments.[1] Thus the colonist guarded it as jealously as his flag, and it was the first system of law applied by his courts in the new world. Gaining good root beyond the seas it survived the Revolution, and in forty-seven states of the Union the courts are administering it today. What an astonishing survival! Take for example the rule that a father is under legal obligation to provide his children with the necessities of life. When and by whom was that rule ordained? It was never ordained at any time or by anybody. It goes back to the primitive customs of the Saxon tribes.

Its relation to statutory law.

During the past eight or nine hundred years, however, another form of law has been encroaching on the common law—slowly at first, but of late more rapidly. This is statutory law, or law enacted by a regular lawmaking body. In Norman and Plantagenet England, as the earlier chapters of this book have already pointed out, the king made laws, first in his great council and later in parliament. And parliament became in time the dominant factor in making the statutes of the realm. Today, therefore, parliament can change any rule of the common law at discretion, and it does make some changes at almost every session. Year by year statutes are passed by parliament to cover things which the common law has failed to cover, or to clarify its provisions, or to codify them, or to enlarge them, or to vary them, or to repeal certain of them together, establishing different rules or principles in their stead. When the common law conflicts with a statute, the statute always prevails. And as statutes multiply, the common law is cut into more and more.

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[1] See the chapter on "The Fundamental Law" in C. H. McIlwain's *High Court of Parliament*, (New Haven, 1910).

Present status of the common law in England.

Nevertheless, the law which the courts of England administer at the present time is common law for the most part; the statutes, numerous though they are, cover a relatively small portion of the entire field.[1] They have dealt mostly with administrative matters and machinery. Most of the underlying rules relating to the rights of the individual are based on common law principles—such, for example, as the principle that men ought to pay their debts, to refrain from injuring the property of others, to fulfil their contractual obligations, to seek redress in the courts and not by their own direct action, to keep the peace, and to be presumed innocent until proved guilty. Whence arose the rule that jurymen should be chosen by lot, that there should be twelve jurors (no more or no less), and that they should reach their verdict in secret? By whom was it enacted that hearsay is not evidence, that a man shall not be compelled to incriminate himself, and that an accused shall be given the name of his accuser? These things did not originate in any constitution, charter, or bill of rights. Where was it first decreed that the citizen cannot sue the state without its own consent? Or that a government official who commits an offence, even in his official capacity, is amenable to the ordinary courts of the law? You will search in vain through the acts of parliament for the origin of any of these legal principles, or for a hundred other fundamental usages which, although every citizen now accepts them as self-evident in their virtue, are the very things which differentiate Anglo-American jurisprudence from that of continental European countries.

Common law and common sense.

The purpose of all law is to assure justice. Law is merely a body of rules whose aim is the systematic and regular attainment of that end. The administration of justice is merely the fixed and constant purpose to give every man his due.[1] It is an old saying that common law is common sense. There is a good deal of truth in this aphorism, for the common law represents the survival of the fittest among the various legal customs and rules which successive generations of men have tried. Having stood the test of time and proved themselves well suited to the needs of the modern community, these rules of common law may rightly be looked upon as the embodiment of common sense. They have been tested under every conceivable set of conditions. The common law is an old standby that has done valiant service for centuries. But people nowadays (both in England and in America) seem to be impatient with things that are old, and sometimes want things that are new—in law as in everything else. To their minds some rules of the common law are archaic and out of fashion; they should therefore be replaced by something modern and up-to-date. So parliament and congress and the state legislatures are alike importuned to set aside certain principles and rules of the common law, replacing them by statutory provisions. The common law, for example forbids unreasonable combinations in restraint of trade. But some people want more than this; they desire to have all such combinations forbidden, whether reasonable or otherwise. In response to their clamors a statute is enacted, and sometimes it proves unworkable. Time-honored rules, which have worked pretty well on the whole, are sometimes thoughtlessly abandoned for newfangled provisions which, in the end, serve the interest of justice much less acceptably.

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[1] The same is true of the United States, although hardly to a like extent. Some states have cut far more deeply into the common law than others. In American law schools at least two-thirds of the instruction is devoted to the common law, and only one-third (or less) to statutory law and equity. In some institutions (including the Harvard Law School) virtually no time is spent in the study of statutes.

Chancery or equity.

Then there is equity. The courts of England administer, in addition to the rules of common and statutory law, a third branch of jurisprudence known as the rules of chancery or equity. These terms convey a very vague, and often a misleading impression to the layman's mind. He reads in the newspapers that an estate is "tied up in chancery" or that somebody has "filed a petition in equity," and both intimations are as Sanskrit to him. Perhaps he has an intuitive feeling that chancery has something to do with chance, and that equity is something peculiarly equitable. But chancery and equity are synonymous terms; they refer to a collateral branch of jurisprudence which runs parallel with the common law and the statutes, with rules administered by the courts in much the same way. The rules of equity are not necessarily more equitable than the rules of law. Law and equity are alike designed to promote justice; but in somewhat different fields, and by different methods of procedure.

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[1] Or, as Ulpian puts it: "Justitia est constans et perpetua voluntas jus suum cuique tribuendi. Juris praecepta sunt haec: honeste vivere, alterum non lædere, suum cuique tribuere." *Digest*, I, Title 1, 10.

The origin of chancery.

To understand what is meant by chancery, or equity jurisdiction, one must know something about origins, and these go back to early Plantagenet, perhaps even to Norman times. Chancery jurisdiction was the outgrowth of an ancient legal doctrine that the king could do no wrong, but stood above the law, being the source of all law and justice. Accordingly, he might mitigate the rigor of the law in the interest of justice. So whenever it appeared to a suitor in the regular courts that the strict administration of the common law would fail to give him justice, he could petition the king for intervention. He could ask the king to give him a remedy that could not be had from the courts. At first these petitions for royal intervention dealt mainly with situations which the common law did not cover, or covered inadequately, and in which the regular courts were unable to give an adequate remedy. Or, on occasions, the king was petitioned to redress a miscarriage of justice which resulted from an accident or an error in the application of the law. At the outset such requests came to the king infrequently, but as time went on they became more numerous. Naturally so, for when it became noised abroad that the king would intervene to forestall or redress injustice there were many persons with real or fancied grievances who sought his intervention.

In the beginning, moreover, the king tried to deal with each petition on its merits, giving the matter his personal attention and discussing it with his Curia Regis or royal council. He soon found, however, that there was too much drudgery in this proprocedure and adopted the plan of referring all such petitions to his chancellor.[1] The chancellor, in these days, was invariably a bishop or other high churchman, and hence might be presumed to have sound ideas as to what constituted justice between man and man. He was commonly referred to as the keeper of the king's conscience. But even the chancellor eventually found himself overwhelmed with petitions. So it became necessary to appoint "masters in chancery" to assist him in his work, and thus there grew up a regular court known as the court of chancery.

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[1] The date commonly given for this transfer is 1280.

Now every petition presented to the court of chancery was originally supposed to be dealt with on its own individual merits. And so long as petitions were relatively few it was practicable to deal with them in this way. But with a great increase in the number of cases the court of chancery found itself compelled to set up some general rules. No tribunal, when it has a large number of cases to adjudicate, can decide each of them on its own merits without reference to other cases. Sooner or later it finds that the merits of many cases are substantially alike, and hence that these cases must be decided in the same way, for otherwise gross injustice would be done. Every court, no matter what its jurisdiction, inevitably creates a body of precedents which are to some extent binding upon itself. So it was with the court of chancery. Precedents, traditions, maxims, rules, and exceptions were evolved one by one until England found herself endowed with that elaborate and intricate branch of jurisprudence which is now known as equity.

The rivalry of law and equity.

By the close of the Middle Ages, therefore, three separate fields of jurisprudence had been marked out in England—common law, statutory law, and equity. All of it was the law of the land, all of it had its source in the authority of the king. Common law was the usage of the realm as declared by the king's courts; statutory law was the work of the king in parliament; equity was the outcome of the king's position above the law. In procedure, also, a distinction between law and equity had grown up, because the court of chancery did not follow the procedure of the law courts, but developed a different system of its own. Incidentally it began encroaching upon the law courts, claiming the right to issue injunctions against persons who tried to seek their remedies at law. Thereupon a merry rivalry ensued, and for a time it seemed as if equity might eventually spread itself over the whole field of civil justice, because the court of chancery claimed the right to assume jurisdiction over all new causes of controversy and to create new remedies for injustice. In the reign of James I, however, this claim was definitely repulsed, and thereafter the two branches of judicial administration settled down on more amicable terms, each within its own domain. The lines of demarcation have never been made absolutely clear, nor are they clear in all cases today. But in a general way every lawyer knows where the law leaves off and where equity begins.

What equity is today.

What, then, is the field of chancery (or equity) jurisdiction today? Let it be explained, first of all, that chancery has nothing to do with crimes, but only with civil controversies. All criminal cases go to the law courts. And among civil controversies only a small proportion are dealt with at equity. The law in the great majority of cases has the right of way. Nevertheless, there are some controversies which are governed exclusively by the rules of chancery,—for example, controversies arising out of the administration of a trust by a trustee. And there are some cases in which redress may be sought either at law or in equity as the aggrieved person may prefer. These are known as instances of concurrent jurisdiction. In general, however, equity follows the law, in other words equity does not intervene save in cases where the remedy at law can be shown to be inadequate.[1]

The same courts in England (as in the United States) now administer both law and equity. A statutory fusion of the two was provided by the Judicature Act of 1875. The court of chancery and the common law courts were merged into a single High Court of Justice. As a matter of convenience, however, the High Court was organized in "divisions", and to the chancery division are assigned all matters which were dealt with by the old court of chancery prior to 1875. But the work of the chancery division is not confined to the giving of remedies at equity; it extends to the giving of common law remedies as well. In a word, there are no longer two competing systems of jurisprudence, but a single system, with two branches which follow somewhat different procedures.

The courts of England.

This, then, is the body of jurisprudence that the courts of England administer. Note that it is the courts of England (including Wales), not the courts of Great Britain. There is no system of law applying to the United Kingdom, much less to the entire British empire or commonwealth of nations. There is no one court with final jurisdiction over the whole British empire, although the House of Lords is virtually a supreme court for the

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[1] It would be folly to attempt, in a few paragraphs, a delineation of the respective boundaries between law and equity. Anyone who wants to know what equity is, what it covers, and how it is administered, must devote a great deal of study to the subject.

United Kingdom and Northern Ireland. India, the Irish Free State, and the dominions have their own legal systems, and their own courts, but appeals may be carried to London where they are heard and determined, as will be later explained, by the judicial committee of the privy council. So the only high court that functions throughout the whole British empire is the high court of parliament.

The Judicature Acts.

The present-day organization of the English courts, and their contemporary procedure, dates from about fifty years ago. The courts themselves are much older, of course, but they were entirely reconstructed by the Judicature Acts of 1873-1876. Prior to 1873 the judicial organization of England was in a state bordering on chaos, with numerous tribunals possessing special functions, archaic procedure, and over-lapping jurisdictions. The legislation of a half century ago brought the higher courts into a unified system and so they remain today.

The double hierarchy of English courts.

One of the first features of English judicial organization that attracts the attention of an American student is the bifurcation of court business. In the United States the same court usually takes jurisdiction in both civil and criminal cases, although they may be handled at different sittings. The organization of the English courts, on the other hand, is based upon a vertical division between criminal and civil cases; the same courts do not always exercise jurisdiction in both fields. A criminal case, it should be explained, is one in which the prosecution is conducted in the name of the crown; a civil case is one in which one private citizen or corporation enters an action against another.[1] One aims to impose punishment for a crime; the other to provide redress for a tort or civil wrong.

1. The criminal courts.

In England when a person stands charged with a crime he is brought before one or more justices of the peace, or, in the larger towns, before a magistrate.[2] Minor cases are dealt with summarily in these courts, which are known as courts of summary jurisdiction. Appeals may be carried to the court of quarter sessions, which is a county court.[3] The court of quarter sessions also deals with cases which are beyond the jurisdiction of the justices but not serious enough to warrant holding the accused for the assizes. If the evidence appears to indicate the commission of a serious offence, (such as murder or manslaughter) the prisoner is held for trial at the next assizes. This is the designation of a court which is held periodically in each county, and in each of the larger towns, by a judge of the high court who goes around on circuit and sits with a jury. The assizes, to some extent, deal with civil as well as with criminal cases. For the metropolitan area of London there is a central criminal court, popularly known as the Old Bailey, which is to all intents the assize court for London and sits at least twelve times a year. A further appeal from these tribunals may be taken on points of law in any criminal case (or, under certain conditions, on questions of fact) to a court of criminal appeal which is made up of judges assigned to it from the king's bench division of the high court of justice. And finally, if the attorney-general gives consent, the defendant in a criminal case may carry his appeal to the House of Lords. This he does whenever some new or important legal question is raised. The gamut of criminal justice, therefore, runs through summary jurisdiction, quarter sessions, assizes, court of criminal appeal, and House of Lords.

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[1] It is also possible, of course, for the crown to bring a civil suit against an individual or corporation.

[2] This official is called a stipendary magistrate because he receives a salary, while justices of the peace do not.

[3] Some of the larger towns, however, have courts of quarter sessions of their own.

Appeals in criminal cases.

2. The civil courts.

Civil cases in which no large amounts are involved[1] come up, first of all, in courts which are called county courts, although their jurisdiction does not in any coincide with the bounds of the counties.[2] These courts sit at frequent intervals in various parts of the district over which they have jurisdiction. They are presided over by judges who are appointed by the lord chancellor from among barristers of at least seven years' standing and may be removed by him. Appeals from these county courts are taken to the high court where they are heard before a bench by two or more justices, and from thence an appeal may be carried to the court of appeals which is the upper chamber of the high court of justice. If the amount involved is sufficiently large, the case comes before the high court in the first instance and does not go to a county court at all.

This high court of justice, to which reference has been made

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[1] The limits is £50 in ordinary cases and £100 in some special instances. These district courts have also been given special jurisdiction by various statutes, notably by the Workmen's Compensation Acts.

[2] Minor civil cases may be tried by a court of summary jurisdiction.

The high court of justice.

in the foregoing paragraphs, is organized in three divisions, namely the chancery division (or court of chancery), the king's bench division, and the division of probate, divorce and admiralty. Cases come from the county courts to each of these divisions, or in some instances originate in the high court. Appeals from all three divisions go to the court of appeals,[1] and under certain restrictions may be finally carried to the House of Lords. The gamut of civil justice, therefore, is summary jurisdiction or county court, assizes (in certain cases), high court, court of appeals, and House of Lords.

The House of Lords as a supreme court.

It should not be imagined, however, that the seven hundred members of the House of Lords, hear and determine the technical points of law which are brought up by ultimate appeal from the courts of justice. All appeals which come to the House are heard by seven law lords, namely, the lord chancellor and six lords of appeals in ordinary.[2] These dignitaries, although members of the House of Lords, need not be hereditary peers. The lord chancellor is the presiding officer of the House and a member of the cabinet. He is chosen like other members of the cabinet and holds his office on the same tenure. The six lords of appeal (or law lords, as they are more commonly called) hold peerages for life. Invariably they are men of high judicial distinction, eminent judges or lawyers who are made life-peers in order that they may exercise the judicial functions which belong to the House as a whole. But these law lords, when they sit, constitute the House of Lords and are not in any sense a mere committee. They give, and do not merely recommend, judgment.

A unique tribunal: the judicial committee of the privy council.

Special attention should be called to one other high tribunal, the judicial committee of the privy council, which is the ultimate court of appeal in cases which come from the courts of India, Southern Ireland, the British dominions and colonies, as well as from the ecclesiastical courts in England.[3] Its jurisdiction thus covers a very wide geographical range. But it is not a court in the ordinary sense of the term. It is made up of the lord chancellor and former lord chancellors, the six lords of appeal already mentioned, the lord president of the privy council and some other members of that body, together with certain judges appointed from the higher courts of India and the dominions—about twenty members. But the real work of the judicial committee is done by the lord chancellor and the six lords of appeal, aided by their overseas colleagues on matters affecting their respective territories. This assistance is indispensable because the appeals which come before the judicial committee involve not only the interpretation of the common law but the application of principles derived from various widely differing legal systems, such as those of India, Hong-Kong, French-Canada, and Malta.

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[1] The three divisions of the high court, together with the court of appeal, technically form one court known as the supreme court of judicature. The high court is its lower chamber, and court of appeals its higher chamber.

[2] Other peers who hold, or have held, certain high judicial offices, may sit with them if they choose. See *above*, p. 103.

[3] In addition it hears appeals from the courts of the Channel Islands, the Isle of Man, and from prize courts in time of war. Prize courts are courts which deal with the condemnation of captured vessels and other property.

Its procedure.

Not being a court the judicial committee of the privy council renders no judgments. It merely recommends to the crown that the decisions of the Indian or colonial or ecclesiastical courts be confirmed or reversed. Every decision ends with the words: "Their Lordships will therefore humbly advise His Majesty, etc." But since its recommendations are always followed, they are judgments to all intents and purposes. They are always followed by an order in council embodying the recommendations in the form of a judgment. Here, again, we have a survival of the ancient principle that the crown is above the law and may set aside the decisions of the regular courts. This idea died out in England long ago, and decisions of the regular English courts can no longer be set aside by royal intervention. But in India and in the colonies the doctrine of the crown's judicial supremacy has lived on. When, therefore, a suitor is dissatisfied with a decision of the supreme court of Canada, for example, he is in certain cases allowed to "petition His Majesty" for redress. His Majesty, so the theory runs, turns for advice to his privy council, and the privy council refers the issue to its judicial committee. The committee hears the arguments and recommends that the petition be granted or denied. That is the theory of the procedure. But practice has found a shorter cut and the petition goes directly to the judicial committee which in effect pronounces final judgment. There is no appeal from the action of the judicial committee hence it is a supreme court for Southern Ireland, India, and all the British dominions and colonies. It serves as a tribunal of last resort for more than three hundred million people, hence its jurisdiction is geographically wider than that of any other appellate body.

Attitude of the dominions in the matter.

This arrangement has not been altogether relished by the colonial governments, but the British parliament has been unwilling to change it. On more than one occasion the government of Canada has endeavored to restrict the carrying of appeals from Ottawa to London, but without much success. When Australia adopted a federal constitution, a quarter of a century ago, an attempt was made to provide that no appeals should be carried to the judicial committee of the privy council without the consent of the Australian high court. But the British parliament would not agree to this limitation and the judicial committee still retains the right to permit appeals on its own initiative.[1] Finally, in 1922, when the constitution of the Irish Free State was under discussion, the issue was once more brought to the front. The Irish negotiators endeavored to secure an arrangement whereby all appeals from Irish courts should terminate in Ireland, but they did not succeed.[2]

The courts of the dominions.

So the judicial organization of the whole British empire heads up in London. Controversies come there for final settlement from the ends of the earth—from Singapore, Ceylon, Malta, Gibraltar, Capetown, Jamaica, Saskatchewan, and the Fiji Islands. Nevertheless, and in spite or all this, the judicial administration of the empire is really on a basis of self-determination. Appeals to the judicial committee are relatively few. The process is so slow and so costly that suitors are discouraged from using it. Not one case in ten thousand among those decided by the courts of India, Australia, Canada, South Africa, or Ireland ever gets to London. And when public feeling in one of these dominions is strongly wrought up over any legal or constitutional issue there is something to be said for the practice of referring it to a body of wholly impartial jurists, sitting afar off, altogether beyond the pale of controversy. As for the ordinary and routine process of judicial administration, all the dominions and colonies are free to regulate things as they please. That is what they have done. No two of them have the same systems of law or legal procedure. The traditional British policy has been to let each dominion adapt its judicial organization to its own special preferences or needs.

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[1] Not all controversies can be carried to the judicial committee of the privy council but only certain designated ones. The scope of the appellate jurisdiction differs in the various dominions. (The details are explained in A. Berriedale Keith's *Constitution, Administration, and Laws of the Empire* (New York, 1924), pp. 29-31). Appeals may come to the judicial committee (a) by right, that is, because they come within the designated category, or (b) by permission, that is, because leave to appeal has been granted either by the judicial committee or by the colonial court. Special leave is necessary for any appeal from the supreme courts of Canada, South Africa, and the Irish Free State, or from the high court of Australia.

[2] Article 65 of the Irish constitution reads, in part, as follows: "Nothing in this constitution shall impair the right of any person to petition His Majesty for special leave to appeal from the supreme court (of Ireland) to His Majesty in Council, or the right of His Majesty to grant such leave."

Some outstanding features of English judicial organization and procedure:

1. The life tenure of judges.

In the organization and procedure of the English courts there are certain features which ought to have a word of explanation, because they are largely responsible for that favorable reputation which these courts enjoy, both at home and abroad. Leading American lawyers and judges have frequently paid tribute to the independence, promptness, and impartiality with which justice is administered by English tribunals. One reason can be found in the position of absolute independence which all the judges of English courts enjoy. All of them are appointed and hold office for life. There are no elective judges in England or in any part of the British empire. Even Ireland, in her new constitution, did not deign to follow the example set by most of the American states. The practice of electing judges inevitably draws the courts into politics and renders them susceptible to political influences. England has done well to preserve the independence of her courts by holding to the principle of an appointive judiciary. It should also be noted that they are appointed from among practising lawyers and not, as in France, from among those who have been professionally trained for the bench. Officers of the court other than judges—such as sheriffs and clerks—are also appointed, not elected, and have permanence of tenure.

2. The acceleration of business.

A second characteristic of English judicial administration is its speed. English judicial procedure does not seem at first glance to be simple, far from it. Some archaic formalities are retained in the court room although they seem to serve no useful purpose. Nevertheless, it is a notorious fact that cases move more rapidly in English than in American courts. This is mainly due to the greater discretion which English judges possess in dealing with legal technicalities. And this, again, arises from the absence of rigid constitutional provisions governing the legal rights of the citizen. English courts do not tolerate the pettifogging tactics which lawyers so often use in American halls of justice. Appeals are not permitted on frivolous grounds. Nor are the judgments of the lower courts so readily reversed on technicalities. No English court, for example, would set aside a decision, and order a new trial because of a misspelled word in the indictment.[1]

3. The higher standards of the legal profession.

Something may also be attributed to higher standards among the members of the legal profession. In England, as has already been mentioned, there are two kinds of lawyers, solicitors and barristers. The solicitor deals directly with the client and prepares the case for trial. But he does not himself present it in court; he engages a barrister to do this for him. The barrister is a specialist in presenting evidence; his business is to appear in court after everything has been made ready for him. This division of labor results in cases being better prepared and better presented than in America where the same lawyer usually tries to do both things and often does neither of them well. To prepare a case requires patient industry, a scrupulous regard for accuracy, and a relish for details,—in a word, the research quality. To present a case effectively requires familiarity with court procedure, quickness of perception, dexterity in questioning—in a word, the argumentative quality. Some lawyers have one quality but not the other, and very few have both.

4 The jury system has not been overburdened in England.

A fourth feature of English judicial administration is the care with which the jury, as an institution, has been safeguarded against abuse. England is the ancestral home of the jury system; it was there that the grand jury and the trial jury first became regular agencies of enquiry and adjudication. Both are still used in most of the courts throughout the British empire except the lowest and the highest. In the trial of all serious crimes, and in civil cases involving a substantial issue, a jury trial may be demanded. In all serious criminal cases, moreover, the evidence must first be presented to a grand jury and an indictment returned before the accused can be placed on trial. On the other hand the jury system has not been overworked by extending it to the trial of relatively unimportant issues, thus making jury service a burden which busy citizens seek in every way to evade. The whole jury system is under a fire of criticism in the United States because it has been overburdened. No institution, however good, will stand an unlimited strain without giving way. In England the jury has been held to its original function.

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[1] American courts have actually done this. See, for example, the decision in Wood *v.* State (50 Alabama, 29) where a conviction for assault with intent to kill was set aside because the copying clerk left out the letter *l* in "malice." See the decision in Lemons *v.* State (4 West Virginia, 775) where a conviction for theft was quashed because the state was mentioned in the indictment as "W. Virginia" instead of "West Virginia."

5. No manhandling of the witnesses.

But after all the most impressive thing about the work of an English court is the fairness with which cases are heard and decided. The judges, not the lawyers, rule the court room. Barristers know that the manhandling of witnesses will not be tolerated, and they keep within the bounds of decency. They do not turn the court into a grill room. It amazes an American lawyer to see a murder trial begun and ended within a week, even when many witnesses are examined. In American courts it sometimes takes that length of time to get a jury empanelled. English courts keep abreast of their calendars and thus prevent those long delays which are in effect denials of justice. It may be, of course, that this regularity with which the calendars are cleared occasionally spells injustice, but there is unquestionably less of it than there would be if the lawyers had their own way.

6. No system of administrative courts in England.

A final characteristic of the English system of law and law courts remains to be noted, for it stands in sharp contrast with what one finds in France, just across the channel. This is the absence of a broad distinction between ordinary law and administrative law, between ordinary courts and administrative courts. In France, as will be seen later, the officers of the government are not amenable to the ordinary courts for certain acts done in their official capacity. For such actions they must be sued, if at all, in special courts known as administrative courts which follow a procedure of their own. The English common law recognizes no distinction between the acts of a government official and those of an ordinary citizen. The only individual who is exempt from the jurisdiction of the regular English courts is the monarch himself. Anybody else, when brought before the English courts, is required to show that his action was within the law, otherwise he becomes personally liable for any injury that he has done. English jurists have laid great stress upon this right of the citizen to summon public officials before the ordinary courts. They seem to regard it as a right which gives the Englishman an advantage over all his continental neighbors.

There is no occasion for this complacency. The system of administrative law, as it exists in France, does not deprive the French citizen of any real right that the Englishman possesses. It is true that the Englishman can bring suit against a public official in the ordinary courts, and may secure an award of damages; but this will not avail him much unless the official is personally able to pay the award, which he very often is not.[1] The Frenchman must bring his suit (under certain circumstances) in special administrative courts which are provided for the purpose. That may seem to be a hardship, but if he obtains an award it is always enforceable, for it is an award against the government, not against the official personally. So, if we regard the matter from the standpoint of what the individual actually obtains in the way of redress against the abuses of power on the part of public officials, the absence of a regular system of administrative law in England (and in the United States) is not necessarily a matter of congratulation.[1] More will be said on this subject, a little later, in describing the judicial system of the French Republic.[2]

7. The English concept of unconstitutionality.

The concept of unconstitutionality, with which we are so familiar in the United States, is wholly unknown to the courts of England. No English law is ever declared unconstitutional by the judiciary. Nothing that parliament does can be set aside by any court, high or low. It matters not that the law is repugnant to the provisions of Magna Carta, the Petition of Right, or any other of the so-termed constitutional landmarks. If it has been enacted in good form it stands. Hence when an Englishman says that some action of parliament is unconstitutional he merely implies that it is a departure from some age-old tradition. He does not mean that it is legally invalid or that there is any hope of having it declared so. But acts of the Irish, Indian, or colonial parliaments can be held unconstitutional in true American fashion. This is because Ireland, India, Canada, Australia and the other dominions have written constitutions which limit the powers of their respective legislatures. The judicial committee of the privy council is the body which determines the constitutionality of their laws.

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[1] In England a suit for breach of contract may be brought against the crown by means of the procedure known as the "petition of right"; but no action for tort (arising, e.g., from the negligence of a government official) can be brought against the crown.

Although there is no regular system of administrative courts in England or in the United States, there has been a considerable development of administrative law in both countries. These rules of administrative law are interpreted and applied by various executive departments, bureaus, and boards—generally with the right of appeal to the ordinary courts.

[2] *Below*, p. 520.

8. No formal guarantees of individual liberty.

In America the citizen is accustomed to place a good deal of emphasis upon his constitutional rights,—for example, the right to freedom of speech, freedom of the press, freedom from unreasonable searches and seizures, freedom of worship, and the other rights which are guaranteed to him in the national or state constitutions. The Englishman has no constitutional rights in this sense, none that are beyond the legal authority of parliament to infringe. If parliament were to allow the taking of private property for public use without just compensation, no court would stand between it and the despoiled citizen. But the Englishman loses nothing by reason of this absence of formal, written guarantees. His rights are securely guaranteed by the ancient usages and traditions of his government. These traditions and usages are in reality more effective than any set of phrases written on paper. Freedom of speech, freedom of the press, freedom of worship, and the other civil rights have become so deeply ingrained in the national life that parliament, with all its technical omnipotence, dares not abridge them in time of peace.

The influence of traditions.

The written word does not amount to much unless it has the will and sentiment of the nation behind it. The French constitution of 1791, for example, contained the most iron-clad guarantees for freedom of the press, freedom of conscience, and the right of public meeting. Yet, as Professor Dicey says, "there was never a time in the recorded annals of mankind when each and every one of these rights was so insecure, one might almost say completely non-existent, as at the height of the French Revolution."[1] The Mexican constitution of today contains a bill of rights closely modelled on that of the United States. It is studded with comprehensive guarantees for the rights of the peon. Yet these guarantees, as everyone knows, have for many years been chiefly honored in the breach. In the constitution of the United States there is a provision that no citizen shall be deprived of the suffrage on account of race, color, or previous condition of servitude! Need one go farther afield for a verification of the Latin maxim *Quid sunt leges sine moribus?*

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[1] *The Law of the Constitution* (New York, 1889), p. 186.

There is a certain advantage in having the liberties of the citizen buttressed by custom rather than based upon law. For laws and constitution must be precise in their terminology. This precision makes them rigid, and when emergencies arise it it found that they either go too far or not far enough. It is exceedingly difficult to frame guarantees of individual liberty in such phraseology that they will amply protect the citizen and yet not become susceptible of abuse. Freedom of speech, and of the press, cannot be defined in unqualified terms. The makers of the new German constitution, as will be seen later, have attempted to solve the problem by guaranteeing each right in broad terms and then adding that exceptions may be made by law.[1] Now that is exactly the English arrangement, although it is not so expressed. The fundamental rights of the citizen are broadly guaranteed by constitutional usage. But parliament may make exceptions to any and all of them when the occasion demands. So the "high court of parliament" is a designation which has not lost its original significance. Parliament is still, in a sense, the supreme court of the realm. It is the supreme tribunal which interprets, applies, and modifies those usages upon which the practice of English government relies.

The most useful brief outlines of English legal development are Edward Jenks' *Short History of the English Law* (Boston, 1912), and F. W. Maitland and F. C. Montague, *Sketch of English Legal History* (New York, 1915). The historical development of the English courts is explained in A. T. Carter's *History of English Legal Institutions* (London, 1902) and in William S. Holdsworth's *History of English Law* (London, 1909), Vol. I. English court procedure, especially in criminal cases, is outlined in G. G. Alexander's *Administration of Justice* (Cambridge, 1915). C. H. McIlwain's *High Court of Parliament and Its Supremacy* (New Haven, 1910) is one of the most valuable books in the field. Brief general discussions of the English judicial system may be found in Lowell's *Government of England*, Vol. I, chaps. lix-lxii; Ogg's *Governments of Europe*, chap. xii; Jenks' *Government of the British Empire*, chap. xi, and Masterman's *How England is Governed*, chap. xi-xii.

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[1] *Below*, chap. xxxi.

CHAPTER XVI

LOCAL AND METROPOLITAN GOVERNMENT

The liberties of England may be ascribed above all things to her free local institutions. Since the days of their Saxon ancestors, her sons have learned at their own gates the duties and responsibilities of citizens.—*Blackstone.*

The importance of local institutions.

Democracy is said to have an educative value. Its eulogists are fond of asserting that it enlightens the people. But the educative value of a democracy depends very largely upon the nature and spirit of its local institutions. The county, the town, and the parish are potential schools of citizenship, as both England and America have long since discovered. It is in the ward caucus and in the town meeting that people most easily learn the first lessons in the art of governing themselves. Until you learn to govern, or be governed by, your own neighbors it is futile to expect that you can successfully govern people afar off. The complications and difficulties of government increase as the square of the distance. It is for this reason that the tree of liberty is more firmly rooted in English-speaking than in Latin countries. Local institutions in England and in the United States are more truly democratic than in the countries of Continental Europe; they stand more firmly upon their own feet, have a greater degree of independence, and contribute more substantially to the political education of the people.

A word about origins.

The English system of local government is the result of a long historical evolution, for the most part unguided and unplanned. There were shires, hundreds, townships, and boroughs in Saxon times, each with its own local authorities. After the Norman conquest the shires became counties, the hundreds disappeared, the townships passed for the most part into the hands of feudal lords and became manors, while the boroughs eventually secured their freedom and became chartered municipalities. Meanwhile a new unit of local administration, fostered by the church and virtually taking the place of the old township, came into being and ultimately attained some importance. This was the parish, with its voluntary meeting of the parishioners presided over by the parish priest.[1] Originally the parish meeting dealt only with church affairs but it gradually acquired some civil functions as well. It was the forerunner of the town meeting in the New England colonies.

Local areas at the close of the Middle Ages.

At the close of the Middle Ages there remained, therefore, three principal areas of local government in England,—the county, the borough, and the parish. The administrative work of the county was entrusted to officials known as justices of the peace whose functions were originally those of peace officers but who proved to be convenient authorities for supervising many matters of purely civil administration such as the building of roads and bridges, the maintenance of public order, and the care of the poor. These justices were appointed by the crown. The boroughs or chartered towns were governed, in the main, by close corporations. Originally all the freemen of the borough had a voice in its government. But the lists of freemen were gradually narrowed until only a very small fraction of the inhabitants were entitled to a share in choosing the borough officials. These officials usually consisted of a mayor, aldermen, and common councillors.

Such, in brief outline, was the organization of English local government during the Tudor, Stuart, and Hanoverian periods. It came down, practically unaltered, into the nineteenth century. In the course of this long interval much of its earlier democracy was sapped away; but the spirit of local self-government was never wholly extinguished. For years, during the Stuart period, the king ruled without a parliament. There were no parliamentary elections. But there were local elections, as before. In the boroughs and the parishes the freemen and the ratepayers continued to choose their own officers and thus keep alive the spark of English democracy.

Effects of the Industrial Revolution on local institutions.

Until the industrial revolution changed the face of England in the closing decades of the eighteenth century this scheme of local government served tolerably well. There was no great popular dissatisfaction with it. But the transformation that was wrought by the coming of the factory system soon rendered it obsolete. New manufacturing towns grew up, almost overnight. Many of the older boroughs sprang into a new lease of life, doubling and redoubling their populations within a few years. These throbbing centers of industry soon cried out for better police protection, better roads, better sanitation. They made demands which the old local authorities were unable to meet. So appeal was made to parliament,—and parliament, instead of replacing the old authorities, merely devised some new administrative machinery and added it on. Local improvement districts were carved out, overlapping boroughs or parts of boroughs. The authorities of these districts undertook the improvement of highways and sanitation which the officials of the boroughs had neglected. Dissatisfaction with the administration of poor relief in the parishes, again, inspired the creation of poor law unions, with elective officers (known as guardians) in charge of them. This practice of multiplying local improvement districts was the most significant feature in the development of English local government during the early years of the nineteenth century. And rather curiously it is also one of the most significant features in the development of American local administration today—just a century later.[1]

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[1] After the Reformation he became known as the parson (person) or rector (regulator) of the parish.

The chaos of local areas.

Now all this resulted in a veritable chaos of local areas, authorities, and jurisdictions. There were justices of the peace, overseers, guardians, vestrymen, churchwardens, mayors, aldermen, councilmen, and commissioners of a dozen sorts. There were borough rates, poor rates, school rates, sanitary rates—all levied periodically upon the bewildered taxpayer. In 1883 it was estimated that there were more than twenty-seven thousand different local authorities in England and that eighteen different kinds of local taxation were being levied on the people. The jungle of jurisdictions had become so dense that nobody could find his way through it. Yet parliament was reluctant to take the reform of local government in hand and make a job of it, as the French Assembly had done under similar conditions in 1789. Parliament has always disliked to reconstruct anything from top to bottom at one stroke, for that method is not in accordance with the English tradition of reform by gradual evolution. So, with characteristic caution, it went at the work piecemeal.

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[1] On this point see the author's *Government of the United States* (New York, 1925), p. 568.

The era of reform.

A beginning was made with the boroughs because they were the areas most urgently in need of reform. After an elaborate investigation parliament enacted in 1835 the Municipal Corporations Act which gave the boroughs (or cities) of England the general scheme of local government which they retain today.[1] Many years later parliament took up the problem of county government. The Local Government Act of 1888 reorganized county administration in England, notably by transferring the administrative powers theretofore exercised by the justices of the peace to elective county councils. Finally, in 1894, came the District and Parish Councils Act which swept away most of the multifarious special districts (such as highway, burial, sanitary, and local improvement districts) and provided for the creation of new, unified, local areas in their place. These new areas are known as urban districts and rural districts.

These, then, are the three landmarks of reform in English local government, the Acts of 1835, 1888, and 1894. Between them they completely reconstructed the old municipal system. It need hardly be added, however, that all three of them have been many times amended and that several other important statutes dealing with the various special phases of local government have been put through parliament during the past ninety years.[2]

The six local areas of today.

As a result of this prolonged reforming process there are now six principal areas of local government in England, namely, the county, the borough, the urban district, the rural district, the parish, and the poor law union.[3] The scheme of division may be briefly explained as follows: the whole country is first mapped off into administrative counties. Within these counties are urban and rural districts, the former being more densely populated than the latter. These districts are further divided into parishes, and groups of parishes constitute poor law unions. Any area which has received a municipal charter is a borough, and the larger boroughs are known as county boroughs because they virtually form administrative counties by themselves. London, as will be seen later, has a special government of its own.

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[1] The difference between a borough and a city is of no political consequence. Chartered municipalities of whatever size are boroughs; but certain boroughs (by reason of their being the seat of a bishopric, or for some other reason) are entitled to call themselves cities.

[2] The Poor Law of 1834, for example, is highly important in this connection. True, it dealt only with one phase of local administration, but it was the first attempt to cover the country with a network of representative local authorities. Mention should also be made of the Police Act (1856), the Local Government Board Act (1871), the Public Health Acts of 1872 and 1875, the London Government Act (1899), and the Education Act (1902).

[3] The abolition of the poor law union has been strongly urged and doubtless will take place in time.

The county: (a) the historic county.

The county is the largest local government division, but this term is used in two senses. First there are the historic English counties, descendants of the Saxon shires, with their ancient boundaries still unchanged. There are fifty-two of these geographical counties, but since 1888 they have not served as areas of local government. They are constituencies for the election of members to parliament; they are areas of judicial administration with their sheriffs and justices of the peace; and they are the basis of the English militia organization. Each of these older counties has a lord lieutenant whose position has become altogether honorary, and a sheriff whose duties are also of a rather perfunctory sort. But there is no county council or other governing organ in any of these historic counties.

(b) The "administrative" county.

The Local Government Act of 1888 created sixty-two "administrative" counties with somewhat different boundaries.[1] It also created a large number of county boroughs, that is, boroughs which were given the status of counties for administrative purposes.[2] This means that any place having the rank of a county borough is not subject to the jurisdiction of the administrative county within which it is situated but remains part of the historic county.

The governing organ of an administrative county.

The administrative county is an incorporated territory, which the historic county is not. Its governing organ is a county council consisting of a chairman, aldermen, and councillors,—all sitting together. These county councils inherited, by the Act of 1888, the multifarious administrative functions which had been performed prior to that date by appointive justices of the peace. It was not that these justices had proved themselves inefficient; on the contrary they had done their work reasonably well. But it was felt that their wide range of duties should no longer be entrusted to officials whom the people had no part in choosing.

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[1] The administrative county of London was also created, making 63 administrative counties in all. In most instances the boundaries of the new administrative counties were made to coincide with those of the older counties, but in some cases they differ considerably.

[2] There are now 82 county boroughs in England. With a few exceptions all are boroughs with more than 50,000 population.

How county councils are organized.

The county councillors are directly elected by the voters, one councillor from each of the election districts into which the county is divided. Their term is three years. The suffrage qualifications are the same as those established for municipal elections, as explained in an earlier chapter.[1] The number of councillors varies according to the population of the county. The second element in the council, namely, the aldermen, are not directly elected by the people but are chosen by the councillors. When the councillors have been elected, they choose one-sixth of their number to be aldermen, in other words if there are sixty councillors, they add ten aldermen to the council. They may choose these aldermen either from their own ranks or from outside. The county aldermen hold office for a double term, that is for six years, but one-half of them retire every three years. Councillors and aldermen sit together in the same body, and as individuals they have the same voting power. The whole council, aldermen and councillors together, elects a county chairman, usually from its own membership but not necessarily so.

Their powers.

A county council meets regularly four times a year. Its powers are extensive and varied. It supervises the work of the rural district councils; is responsible for the upkeep of main roads and bridges; has some duties with reference to county policing; maintains asylums, reformatories, industrial schools and other county buildings; performs various functions in connection with the system of old age pensions; is the chief educational authority for the county; and has power to levy a county rate or tax.[2] Most of its work is done through standing committees, such as committees on education, on public health and housing, on finance, and on old age pensions.

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[1] *Above*, p. 138.

[2] It should not be understood, however, that the county council has immediate charge of all these things. Its police functions, for example, are performed through a standing joint committee, the members of which are selected in part by the county council and in part by the court of quarter sessions (see *above*, p. 272). This committee is practically independent but depends upon the county council for a portion of its funds. As respects institutions for the insane, moreover, there is a statutory visiting committee which has some highly important powers and there are joint committees with county boroughs for certain other institutions.

Efficiency of their work.

The work of county administration has been efficiently carried on by the councils and their committees. There has been relatively little waste or mismanagement. In the rural counties the people as a whole have taken very little interest in county council elections. They have permitted the landowning interests to dominate the councils about as fully as was the case before 1888. In the more densely populated counties, on the other hand, the popular interest in council campaigns has been lively. This has been particularly true in recent years—since the Labor party began to take an active part in county elections. Labor has been putting up a stiff fight in a number of counties, and in some of them (notably in Monmouth and Durham) has succeeded in electing a majority of the councillors from its own ranks.

Their committees.

The county councils and their committees do not usually concern themselves with the routine work of administration, but only with questions of general policy.[1] The routine is handled by a permanent staff of county officials, chosen on a non-political basis. This staff includes a county clerk, treasurer, surveyor (who has charge of highway construction), health officer, and various other functionaries. They are chosen by the county council, but are not under civil service rules, and (with a few exceptions) may be removed by the council at any time.[2] In practice, however, they are chosen on their personal and professional merits, and they are never removed on political grounds. The efficiency of county administration in England contrasts rather sharply with its notorious inefficiency and wastefulness in many parts of the United States. The reason is partly to be found in the fact that the administrative work of the English county is entrusted to men who are chosen for their competence and do not have to play politics in order to hold their jobs from year to year. But it is also due, in part, to the intelligence, interest, and industry of the county councillors.

The permanent officials in counties.

In county government there is one other outstanding dif-

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[1] There are some exceptions—some councils which persist in dealing with administrative details. The London County Council has been much given to this practice.

[2] The chief exceptions are the health officer, who, if he be a "whole time" official cannot ordinarily be removed except with the consent of the national ministry of health. To remove a county surveyor the consent of the ministry of transport must be obtained if the county council has accepted a grant from that ministry toward the payment of his salary.

One contrast between English and American methods

ference between English and American practice to which attention ought to be called. The American city, even when it grows to metropolitan size, usually remains a part of the county in which it is located, and the county authorities exercise jurisdiction over various matters within the city limits. This jurisdiction often includes, for example, the building and maintenance of main roads and bridges, the registration of deeds, the upkeep of prisons, and the care of the poor. New York City, for example, has spread itself over the whole or the greater portion of five counties, nevertheless its municipal authorities have been given no county functions to perform. The officials of the five counties keep on exercising jurisdiction within the city limits. Chicago now includes four-fifths of the population of Cook county, yet it still remains part of the latter, and the county officials continue to be active figures in Chicago administration. A good deal of friction and waste results from this overlapping of city and county jurisdictions.

Now in England, when a borough or city attains a sufficient population (50,000 or more), it is ordinarily taken out of the county and becomes an administrative county by itself—a county borough it is called. A county borough does not maintain a county council, its own municipal council does the work, merely enlarging its functions. The English plan has eliminated the duplication of effort and the intermittent friction which has marked city-county government in the United States, nevertheless it is not regarded as an altogether satisfactory arrangement and a royal commission has recently been appointed to study the whole question. Meanwhile a few of the larger American cities (Boston and San Francisco, for example) have adopted a somewhat similar plan, combining municipal and county functions in much the same way.

The rural district.

The Act of 1894 provided for the systematization of various areas known as rural districts and urban districts. Within each administrative county the rural parishes are now grouped into rural districts, each district having a council elected by the voters. These councils deal with certain matters of sanitation, water supply and public health—the last more particularly. They also have charge of minor roads; they grant certain licenses, and have an assortment of miscellaneous functions. The English rural district corresponds in a general way to the township in the middle western American states. Its importance is gradually diminishing as England ceases to be a rural country.

The urban district.

England during the past fifty years has become steadily urbanized. Today more than 80 percent of her people live in thickly-populated communities known as urban districts or as boroughs. The distinction between the two is not one of population alone, although it is true that the boroughs are usually more populous than the urban districts. A borough is a place that has obtained a borough charter; an urban district is one which has not received a borough charter but is governed under the general provisions of the Act of 1894 and amending acts. Borough charters are still granted in the name of the crown.

Whenever any part of an administrative county becomes thickly settled (and hence has special needs in the way of sanitation, water supply, health protection, and the like), the county council has power to organize the area into an urban district. Thereupon the inhabitants elect an urban district council made up of at least one councillor for each parish within the district. There are no aldermen in district councils, but the council elects its own chairman and may choose him from outside its own membership if it so desires. The urban district council has a variety of local powers in matters of minor highways, housing, sanitation, public health, and licensing.[1] Its authority is somewhat more extensive than that of a rural district council.

The borough.

This brings us to the organization and work of the English borough. There are more than three hundred boroughs in England, ranging from small places with a few thousand population to great industrial communities like Manchester and Liverpool. Their government consists of a single organ, namely, the borough council (or town council as it is more commonly called). This council is composed of a mayor, aldermen, and councillors, all sitting together. The councillors are elected by popular vote for a three-year term. The larger boroughs are divided into wards and the councillors are chosen under the ward system.[2] Nominations for the council may be made by any ten qualified voters and the election is by secret ballot without party designations. The absence of party designations does not mean, however, that party lines are disregarded in borough elections. In most of the larger boroughs these lines are closely drawn, although not so rigidly as in national elections. During the past decade, by reason of the greatly-increased activity of the Labor party, the municipal campaigns have become more lively than they used to be. In a good many instances the Conservatives and Liberals have combined their forces to defeat the Labor candidates in these local elections, but even the combination has not availed in all cases.

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[1] When the population of an urban district passes a certain figure the council also has various powers with reference to elementary education, old age pensions, and some other matters.

[2] As one-third of the councillors retire annually there is a municipal election every year. Usually each ward has three, six, or more councillors, of whom one, two, or three are elected or re-elected annually. The ward system

Borough councils.

The councillors, after election, choose aldermen to the extent of one-third of their own number.[1] They can be chosen from the ranks of the councillors or from outside as the council may prefer. When councillors are chosen to be aldermen the vacancies are filled at a special election. The aldermen hold office for six years but sit with the councillors and have no special privileges. Every member of the council, whether he be a councillor or an alderman, has an equal vote on all questions. By reason of their longer terms and greater experience, however, the aldermen provide the council with a steadying influence which on the whole has been helpful. But some municipal reformers have a feeling that the aldermen also weaken the direct responsiveness of the council to the people and would like to see them eliminated.[2]

The mayor.

The mayor is chosen by the council, that is, by the aldermen and councillors sitting together. Here again the council has complete freedom to choose from its own membership or from outside. Sometimes it goes outside, but as a rule it does not. The mayor holds office for a single year but may be re-elected. He is the presiding officer of the council and is entitled to vote on all questions, but has no special executive powers. He makes no appointments, and the council's resolutions do not need his approval. He has no veto power like the American mayor. His position is largely one of honor although he is sometimes called upon to decide matters which need to be settled imme-

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has not become discredited in England to the extent that this has taken place in America.

[1] Those aldermen who "hold over," that is, who have three more years to serve, also vote in making this choice.

[2] C. F. G. Masterman, *How England is Governed* (New York, 1922) p. 76.

diately but are not of sufficient importance to warrant his calling a special meeting of the council. On the other hand the routine duties of his office consume a considerable portion of the mayor's time and this time he must give without monetary compensation, for the English mayor receives no salary. An allowance is made to him for his official expenses, it is true, but the amount is rarely sufficient to reimburse him for his own outlay, wholly apart from his time. In the old days it was commonly said that a wealthy peer made an ideal mayor, for the reason that he could act the part acceptably on gala occasions and could also be induced to make a handsome subscription to the funds of every civic cause. But things have somewhat changed within the last dozen years. Today, with Labor in control of many borough councils, the mayor is sometimes a modest wage-earner who can display no such largesse and is not expected to do so.

Powers of the council.

In all matters connected with the government of the borough the council is the sole legal authority, subject, of course, to the supervision of the national government. There is no division of power between the executive and legislative branches of English municipal government such as exists in so many American cities. The English borough council is the executive and legislative authority combined. It enacts the by-laws, determines the local tax rate, prepares and votes the budget, appoints all officials, and supervises the work of the municipal departments such as streets, police and fire protections, health, sanitation and schools. A large part of its work is done through committees, each of which assumes immediate supervision of a definite administrative service. There is the watch committee, for example, in charge of police, and the education committee in charge of schools. These committees for the most part do not decide things finally, but merely transmit their recommendations to the whole council, which makes the ultimate decisions.

Its committees.

Statutory committees.

In certain cases, however, the committees do have the final decision on matters within their respective fields. This is true of the statutory committees, that is, committees which the council is required by law to appoint and whose duties are to some extent laid down by law. The watch committee (which has charge of borough police) and the education committee are in this category. Both have a certain amount of statutory independence. Some town councils, moreover, have obtained special legislation which authorizes them to delegate functions to committees with power. And in any case the whole council usually concurs in the recommendations which its own committees make to it.

The council's deference to its committees.

This deference of the council to the recommendations of its committees has become an established habit in English municipal governments. It is one of the reasons why the system works well. Committee work, on the whole, is better done in England than in any other country, and this is chiefly due to the readiness with which the committees seek expert advice on matters that come before them. The council's committees are in close and constant touch with the permanent officials of the municipality. The latter attend the committee meetings and take an active part in the deliberations, although they do not vote on any matter. The committee meetings, by the way, are not open to the public. Differences of opinion between the members of the committee and the officials, if such there be, are not heralded to the public in the newspapers. It is difficult to estimate the amount of influence which the officials exert, for it differs from place to place. But it is always considerable. The committees do not invariably follow the advice of the officials, but they give it a good deal of weight and in strictly technical matters they ordinarily follow it.

The "permanent" officials.

Laymen govern the English city, therefore, even as laymen determine the course of municipal policy in the cities of the United States. But with this difference, that in England they work more closely in co-operation with the men who possess the technical knowledge and are more amenable to professional advice. One reason for this may be found in the fact that the council is itself responsible for the selection of these men. It appoints the entire administrative staff, including the town clerk, treasurer, chief constable, engineer, medical officer of health—the heads of departments as we call them in America. These officers are not named by the mayor, as with us, nor are they selected by civil service competition. The council is free to choose whom it will, provided the appointee has the general qualifications laid down by law. When, therefore, a vacancy occurs in one of these positions the appropriate committee of the council receives applications for it. After considering the merits of these applications it recommends to the whole council the appointment of the applicant who seems best qualified for the post, and its recommendation is almost always accepted. With a few exceptions, moreover, the council can dismiss an official at any time. It can do this without going through the various legal formalities which are so commonly required in the United States. In other words the administrative officials of English cities are neither chosen under civil service rules, as we understand them, nor are they given "civil service protection" against removal. They are called permanent officials, but they have no legal guarantee of permanence.

English city government in operation.

At first glance this arrangement would seem to provide an easy entrance for the spoils system. A partisan committee, it might be assumed, would quickly utilize the municipal payroll as a means of rewarding its own political friends. But the committees have not done this. Where the merits of two applicants seem to be equal, or nearly equal, political influences may determine the choice; but no amount of political backing will ordinarily avail to secure an important municipal appointment for anyone whose qualifications are merely political and are not based on personal merit. And although the council may remove borough officials at its discretion, without adequate cause, the fact is that such things do not happen in English cities. The English city council has never acquired the habit of treating these positions as plunder, to be distributed for the benefit of the victors. It is difficult for Englishmen to understand why such a habit has developed in any other country. So the permanent officials of an English municipality have security of tenure in the sense that men in private occupations have it. What precludes a bank from discharging its cashier without good reason, or a railroad from dismissing its traffic manager? There are no legal barriers in the way. Yet private corporations make no practice of ousting efficient employees whenever a new board of directors is chosen and there is no sound reason why they should do so. In this same way the officials of English cities are protected and given permanence of tenure by a sound conception of what the city's best interests are.

Its strongest feature.

Permanence of tenure makes an official familiar with all phases of his work. It makes him a specialist in his own department, provided, of course, that he is an official who is able and willing to learn. He acquires knowledge—and knowledge is power in every field of human activity. It is not surprising, then, to find that the influence of these officials upon current municipal administration is both strong and steady. It is exerted inconspicuously in the committee rooms, and especially through the chairmen of committees who appreciate the fallibility of amateur judgment in matters of technical complexity. English cities, on the whole, have been well governed. They have given the ratepayer a good return for his money. They have not been made the prey of spoilsmen, franchise seekers, and grafting contractors. Scandals have been infrequent, even in the police department where corruption usually makes itself manifest when it comes. When municipal government deteriorates it is this branch of administration that almost invariably encounters the beginnings of the process. Many Englishmen feared that when Labor came into power the standards would quickly be lowered. It was predicted that the Labor councillors would insist on filling all the administrative offices with their own friends and thus break down the best traditions of English municipal government. But these dire forebodings have not been realized. Save in a few boroughs the advent of a Labor administration has not impaired the efficiency of local government, and in some of them it has actually wrought an improvement. It has put ginger into some places that needed a little.

Its general efficiency.

Can the standard be maintained?

Yet there is no disguising the fact that English municipalities have some hard sledding ahead of them. During the past ten years many new functions have been devolved upon them by the national authorities and it is altogether likely that this process of devolution will be continued. It necessarily means an increase in municipal expenditures, in the number of borough officials and employees, in the opportunities for wastage and malfeasance. There is such a thing as overloading a government with functions, and breaking it down. On the other hand it will be suggested that these new duties are necessitated by the growing complexity of modern life, which is constantly bringing new problems, and that they must be lodged somewhere. The only question is whether they should be performed by the national government directly, or devolved upon the subordinate authorities. As between these two alternatives Englishmen are inclined to prefer the latter for the reason that it gives greater flexibility to administration, brings the new problems more closely to the people, and is a safeguard against the creation of a great national bureaucracy—something that they have always dreaded. This being the case it is probable that the work of the municipal authorities will keep on being expanded.[1]

Now although it has been the practice to bestow large powers upon the local authorities in England, this does not mean that the latter are free to exercise these powers as they will, without supervision on the part of the national government. All branches of English local government are subject to a considerable measure of control and supervision by the national authorities. There is more of this central supervision in England than in the United States, but less of it than in the countries of continental Europe. What now exists in England, moreover, is largely the product of the last fifty years. For centuries there was almost none at all. Counties, boroughs and parishes did about as they pleased, with no interference from above. But this arrangement was practicable only so long as most of the people lived in rural districts and required very little in the way of public services. With the growth and shifting of population which took place during the nineteenth century this go-as-you-please policy broke down. It became necessary for the central government to step in and see that essential public services were provided. This central control of local government began to develop in the early years of the nineteenth century; it grew slowly at first but took on momentum as the years went by. During the past few decades it has been extending rapidly.

The central supervision of local government in England:

1. Its development.

This work of central supervision is now vested, for the most part, in the hands of six national departments, namely, the ministry of health, the home office, the board of education, the ministry of transport, the board of trade, and the electricity commissioners who are attached to the ministry of transport. Of these the ministry of health has the widest range of supervisory duties, for it inherited in 1919 all the functions of the local government board, with some new duties added. Today it has general control over the administration of poor law relief, the system of social insurance, the audit of accounts in local government areas (except boroughs), the approval of local

2. How it is now exercised.

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[1] Two other areas of local government are the civil parish and the poor law union. The authorities of the civil parish now play a very small part in local administration. In each poor law union there is an elective board of guardians which administers the system of poor relief.

borrowing in certain instances, and the care of the public health. It exercises a good deal of its control by means of inspection and inquiry. The home office has surveillance over local police administration and is responsible for the inspection of factories. The board of education, as its name indicates, is concerned with the general oversight of local schools. It controls the inspection of educational institutions which are maintained out of the public funds. The ministry of transport has supervisory jurisdiction over tramways or street railways. Gas supply is nominally under the board of trade although most of the work, so far as gas plants operated by the municipal authorities are concerned, is performed by the ministry of health. Electric lighting comes within the purview of the electricity commissioners.

3. Its diffused character.

Thus it will be seen that central supervision is not by any means consolidated in the hands of any single ministry or board. It is very much diffused. The local authorities have to deal not with one central department but with several. And the spheres of supervisory jurisdiction which these several departments possess are not in all cases precisely defined. In some cases two departments share different portions of the same task. The board of trade, for example, has to do with the development of water power, while the ministry of health deals with water supply. This distinction is quite logical, of course, inasmuch as the one is a matter of industry and the other a matter which touches the public health; but the parcelling of jurisdiction in this way is very confusing to those who have not given much study to the system of central control. It differs conspicuously from the plan of centralization followed in many of the American states where the supervision of public utilities has been concentrated in the hands of a single body, commonly called a public utilities commission. In America, on the other hand, these regulating commissions have no such breadth of discretion as is given to the central departments in England. They are usually required to work within much narrower bounds.

The work of the central departments.

In no case, it should be pointed out, is the work of local administration directly undertaken by these central departments. They merely advise, inspect, regulate, give approval, or withhold approval. The general laws provide, in many instances, that the county, borough, district, or parish authorities may do certain things with the approval of the appropriate national department. They also provide, very frequently, that the central department may make rules and regulations for the guidance of the local authorities. The latter must do the work, but the decision as to how the work shall be done rests with some board or office in London. The local authorities are sometimes inclined to resent this paternalism but there seems to be no way of avoiding it. Under modern conditions it is impracticable to permit complete local discretion in matters affecting public health, poor relief, education, and police protection. These things, from their very nature, must be handled with a certain amount of uniformity throughout the country. It would be folly to let every borough make its own health regulations, for example, because disease is no respecter of municipal boundaries. An epidemic in one community is a menace to all its neighbors. The massing of people into urban areas is bound to bring governmental centralization in any country, no matter how strong the traditions of local self-government may be. It is doing this in the United States as well as in England.

English and American methods of centralized control compared.

But the growth of central control in England has taken a very different course from that which it has followed in America. Central control over local government in England is *administrative* in character and extremely flexible. In the United States it is for the most part *legislative*, and hence more rigid. The discretion of a board or official is by its very nature more elastic than the written provisions of a law can possibly be. When a law says that county commissioners or city councils shall do so and so, or shall not do such and such, it gives them no leeway. It treats all communities alike. This is in keeping with the American theory of "a government of laws, not of men." But the fact is that all communities are not alike in their size, needs or problems; and they should not be treated alike. To treat all of them alike means injustice to some. In England they are not all dealt with alike. They are not made subject to uniform rules laid down by the hard and fast provisions of a law. The laws merely provide, for the most part, that the local authorities may do certain things with the consent of the appropriate national authorities. These authorities may grant their consent to one city and withhold it from another. Everything depends upon the circumstances of the individual case.

The essential difference between English and American

An illustration: Municipal borrowing in the United States.

methods of central control over local government may be made clearer, perhaps, by a couple of illustrations. Take the matter of municipal borrowing. Many of the American states have established municipal debt limits. Some of them have put these limits in their state constitutions, thus making them difficult to change; others have fixed municipal debt limits by state law. In either case the usual provision is that a city may borrow up to a certain percentage of its assessed valuation and no more. It may borrow as it pleases up to this point, without getting the consent of any state authority. But when it reaches the limit it must stop borrowing altogether unless it can persuade the state legislature to pass a special act for the city's benfit. Where the debt limit is fixed in the constitution, it cannot issue further loans until the state constitution is changed.[1] All this, of course, is a clumsy and inflexible way of keeping cities from going too far into debt. It makes borrowing too easy until the limit is reached; then it makes borrowing too difficult. It takes no account of the purposes for which the loans are issued. The result is that some cities have wasted their borrowing power on unessential things and have then been forced to do without desirable improvements when the limit has been reached.

But in England when a city desires to borrow money it does not have to reckon with any debt-limit fixed by law. It can borrow no money by issuing bonds until it has obtained approval, either from parliament by special act, or from the appropriate central department. In most cases the approval must be had from the ministry of health. Application is made by the borough authorities, whereupon the officials of the ministry investigate not only the financial resources of the borough but the merits of the particular proposal. This investigation is of great advantage to the municipal authorities because the men who make it are thoroughly familiar with similar undertakings in other parts of the country. They are able to place at the disposal of each municipality the experience of all the others. In this way the local authorities are diverted at times from doing things that would be needlessly expensive or unprofitable. At any rate, after the investigation has been concluded, a report is made to the ministry of health which thereupon approves the borough's proposals or disapproves it. In giving its approval, moreover, the ministry determines the amount which may be borrowed, the term of the loan, and various other conditions.

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[1] There is another method, namely, to find a way of evading the constitution. Some American cities have been able to exceed a constitutional debt limit in that way.

Another illustration: Municipal trading.

Take another illustration. In America the laws of some states allow cities to own and operate public utilities such as gas plants, electric lighting plants, and street railways. In other states the laws do not permit this, or at any rate make it extremely difficult for cities to embark on any profit-making enterprise. General restrictions, designed to protect the tax-payer against risky ventures on the part of the city authorities apply to all cities alike. They make no allowance for the fact that some cities may have good reason for engaging in a municipal enterprise while others may not. In England such matters are largely left to be determined by administrative decision. The laws provide, in a general way, that English municipalities may own and operate their public utilities, or may extend those that they already own, if permission from the appropriate national department can be obtained. In each case they make application; an investigation into the merits of the proposal is then arranged, and permission is either granted or refused.

Why the English plan would not be practicable in the United States.

The advantages of administrative supervision, as compared with legislative control, do not admit of much question. The former is much more effective in achieving the desired end. It saves the time of the lawmaking body. But it would not be practicable, on any broad scale, under the American plan of government. A system of administrative control postulates the responsibility of the administration to the legislature. In England it is responsible, for all the central departments are the agents of parliament, accountable to it. But in the United States the administrative authorities are not the agents of the legislature and are not responsible to it. The state legislatures have no responsible agencies to whom they can delegate powers and from whom they can exact a continuous responsibility. So American state legislatures have kept the supervision of local government in their own hands, and have exercised it in the only way open to them, namely, by enacting laws. The English system of administrative supervision has been widely praised, and it is deserving of praise; but it would not be workable in the United States so long as we hold to the system of checks and balances upon which the whole structure of American government is built.

We have spoken of the English "system" of local government and central supervision, but it can hardly be called a system. It is not systematic. It has no uniformity. It has grown by accretion. From time to time it has been partially reorganized and some of the twists taken out of it; but it has none of the coherence that marks the French system, for example.[1] It embodies no rigid philosophy of government. The English plan of action has been to let things alone until they can be let alone no longer, then to make no more change than the urgency of the situation demands. Local self-government is a tradition, a strong tradition in England, and Englishmen above all other people have a deep respect for their own traditions. But they are also a practical people and not wholly enchained by sentiment. So their local government of today represents a curious amalgam of tradition, opportunism, and sound political sense.

London's government.

Something should be said about the government of London, for the metropolis has bulked large in English political life during all these years. But what is London? The outsider is nonplussed, as well he may be, when he reads that the city of London had a population of 13,700 at the last census. But if he makes enquiry he will be told that the County of London contains five million people, while the London metropolitan police district contains more than seven million. In other words there are three distinct Londons.[2] They differ widely in area, in population, and in government.

The City of London.

The City of London is merely the ancient core of the modern leviathan. It is the municipal entity which began as a Celtic town and became successively a Roman *civitas,* a Saxon borough, a Norman city. It has remained a city to this day—with its old boundaries virtually unchanged and its old type of municipal government largely unaltered. The great reform of the municipal corporations, which took place in 1835, left the City of London untouched. Alone among the cities of England the corporation of this city remains outside the scope of the Municipal Corporations Act. The city occupies an area of about 650 acres (slightly more than one square mile) which is almost entirely occupied by business and public buildings. That explains why it has a resident or "night" population of only thirteen thousand. In the day hours, however, its streets are thronged by hundreds of thousands who come into the city to do business.

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[1] See *below*, chapter xxvi. It ought to be mentioned that the description of local institutions, given in the foregoing pages, does not apply to Scotland and Ireland. They have their own areas and organs of local government which differ considerably in detail, but not in general arrangement, from those of England. The same is true of India and the overseas dominions, the differences in these cases being much more extensive.

[2] There are, in fact, more than three Londons. There is postal London, water London, electricity London, traffic London, the port of London, central criminal court London, police court London. In other words London is a different area in all these connections.

The satellites of the old city.

Around this historic municipality there grew up, in the course of time, a number of satellite communities which were organized as parishes, each with its own government. Eventually there were more than a hundred of these parishes, together with the city of Westminster, all solidly built up and forming a great circle. This was the situation in 1888 when parliament was asked to intervene and consolidate the whole metropolis. The disintegration of local government seemed to be producing administrative chaos and so parliament decided to unify the welter of outer parishes into a larger entity. It did this by creating the administrative county of London with an area of about 117 square miles. As the chief governing organ of this administrative county, provision was made for a county council with extensive powers. A little later, as will be seen, the county was divided into metropolitan boroughs, each having a limited range of local self-government. When an Englishman speaks of the government of London without any qualifying adjective, it is usually this county government that he has in mind.

The administrative county of London.

Finally, there is the London metropolitan police district, often called Greater London, which covers about 700 square miles.[1] It is not a regular municipality but a special district for police purposes only. It has no elective governing officials and its inhabitants do not constitute a municipal corporation. Yet people usually call themselves Londoners if they live within this district.

Metropolitan London.

The City of London is still an "unreformed" municipality, with a form of government that has altered very little since the days of John Gilpin and Dick Whittington. It is a corporation made up of the freemen of the city; that is, of rate-payers who

How the "city" is governed.

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[1] This, after all, is not such a vast area. Los Angeles, for example, has more than 400 square miles within her municipal limits.

pay a fee of one guinea for the privilege of having their names inscribed on the roll of freemen.[1] Only freemen have the right to vote at city elections;[2] but the qualifications for voting at parliamentary elections are the same as in other English cities. The corporation, or body of freemen, governs the city through a lord mayor and three councils (or courts, as they are officially called); namely, the court of aldermen, the court of common council, and the court of common hall.

To explain how these three councils are organized, and what their respective powers are, would take more space than can be allotted here. Suffice it to say that both aldermen and common councillors are elected by wards, while the court of common hall is a sort of town meeting. Most of the power rests with the common council, which manages all the municipal services through its committees; but the lord mayor of London is chosen by the court of common hall from among the two senior aldermen who have served as sheriff.

The lord mayor of London.

The lord mayor of London has no independent powers. His office is purely an honorary one. He appoints no city officials and performs no executive functions. He merely presides at meetings of the three councils and represents the city on occasions of ceremony. At his own expense he provides a stately banquet and a gorgeous pageant—the one for the dignitaries of the city and the other for the people. He is always knighted by the king during his term, if he has not already attained that rank. The salary attached to the office is generous (ten thousand pounds a year), but all of it, and more, goes for official entertainments. The lord mayor has the use of the Mansion House as an official residence.

Efficiency of the city's government.

A curious anachronism is this government of the City, with its strange trappings of mediævalism. Here is a little square in the great chessboard of metropolitan London retaining its quaint panorama of one-guinea freemen and five-guinea liverymen altogether defiant of modern municipal democracy. Yet the City is pretty well governed. Its officials are as honest and as capable as in other English cities. There is nothing mediæval about its public services. Naturally its tax rate is low because the assessable value of the place is enormous. Its people seem to be satisfied with a frame of local government that has remained unmodified for several centuries. On the other hand the existence of this hoary relic at the pivot of Greater London is a thorn in the flesh of many reformers. They feel that the relative independence of the old city is a historical aberration and that the government of the administrative county suffers because the prestige and traditions of the city have not been transfused into the greater entity of London as a whole. "In all civic ceremony, in the entertainment of royalty or foreign potentates, in times of the expression of the popular will or a national appeal, the lord mayor of London, with his aldermen and common council, in the historic Guildhall, completely eclipse, and almost, indeed, obscure, the chairman and members of the London County Council in the squalid litter of their offices."[1]

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[1] A guinea is twenty-one shillings—about five dollars.

[2] The Representation of the People Act (1918) did not change the qualifications for voting in London "city" elections.

How the County of London is governed.

The administrative County of London, organized by the Act of 1888, is governed by a county council which consists of 124 elective councillors (two from each of the sixty parliamentary constituencies of the county and four from the City), together with twenty aldermen. The councillors are elected by popular vote for three years, the suffrage being the same as in other municipal elections.[2] The aldermen are chosen by the councillors, either from within their own ranks or from outside, and serve for six years, but half of them retire triennially.[3] Thus the total membership of the London County Council is 144. The councillors and aldermen sit together and have the same voting power. Together they elect each year a chairman of the council and may choose him from outside the council's membership, in which case the total becomes 145. The practice has been to elect a new chairman each year, and as a rule the choice has been made from within the council's membership.

Council elections.

Save for a lull during the war, the London County Council elections have been stubbornly contested. There are three political parties in London politics. They call themselves Municipal Reformers, Progressives, and Labor, but they are virtually branches of the three national organizations. The Municipal

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[1] C. F. G. Masterman, *How England is Governed* (New York, 1922), pp. 144-145. There is, in fact, however, nothing "squalid" about these offices.

[2] See *above*, p. 138.

[3] When aldermen are chosen from among councillors this leaves vacancies to be filled by special elections.

Reformers in London are largely Conservatives (Unionists) in national politics; the Progressives are mostly Liberals. There can be no exact identity, of course, because the national and local electorates are different in England, the qualifications for voting being dissimilar. It is sometimes said that the national parties, as such, do not figure in London elections, and in a narrow sense that is true; at any rate it was true until the rise of the Labor party. But in a broad sense the national party lines have always held fairly well in London elections, and in recent years they have been considerably tightened. Today the identification of national and local party lines is about as close as in New York or Chicago.

Political parties in county council elections.

During the first ten or fifteen years after the London County Council was established it appeared as though local parties, with local programs, might be built up and maintain their independence. Men of distinction in many branches of life were persuaded to become candidates for the county council and many of them were elected. Districts that were ordinarily Conservative in national elections sometimes sent Progressive members to the council, while Liberal constituencies occasionally (but not so often) chose Moderates or Reformers. But this divorce of local from national politics did not become permanent, largely because the Labor party would not have it so. The rise of Labor as a factor in London politics has compelled the older parties to draw their lines closer, and in some sections it has induced them to combine their forces.

With the stiffening of party lines there is said to have been some deterioration in the quality of the council's membership, but if so it is not yet apparent on the surface. The quality of the personnel in any representative body is to some extent a matter of individual opinion, and in this instance opinions differ considerably. In the early days, when the London County Council was new, it was natural that men of outstanding ability should have been attracted to it. Not so many of them are now candidates for election, perhaps, nevertheless a considerable number of able Londoners still figure among the county councillors. It is beyond question, moreover, that the council is a far more important factor in London life than it was twenty years ago, with much more work to do and more diversified functions.

The powers given to the London County Council by the Act of 1888, and by many subsequent statutes, are extensive in scope. It is the sole authority with respect to main sewers and sewage disposal, fire protection, tunnels and ferries, and bridges (except those in the City). It has charge of those street improvements which are metropolitan in character; although these are usually undertaken under special power conferred by parliament in each instance, as was done in the construction of the Kingsway. But the maintenance and improvement of the regular London thoroughfares (with the exception of the Thames Embankment), are not within its jurisdiction. Subject to the approval of the ministry of health the council may make public health regulations, but the enforcement of these regulations is left largely to the authorities of the metropolitan boroughs. The council has large powers with respect to the construction and operation of street railways, powers which it has freely used. It has undertaken several great re-housing schemes, involving the demolition of slum areas and the erection of workmen's dwellings. It is responsible for the maintenance of the larger London parks (except crown parks) and for providing public recreation. It has comprehensive functions in the matter of education, including elementary, secondary, and technical schools. Finally, the council has a long list of miscellaneous work to do—such as the licensing of theatres, the regulation and inspection of lodging houses, the administration of the building laws, and the maintenance of various institutions for the unfortunate.

The council's powers.

To do all this work takes money, and the council obtains its revenue from three principal sources. The national government contributes grants-in-aid or subsidies towards the cost of certain services. Some income is derived from tolls, rents, fees and payments of various kinds. But the bulk of the council's revenue comes from rates, or local taxes. These rates are always levied by precepts or warrants from the various metropolitan borough councils. In other words a single rate is levied for both county and borough purposes, the county council and the borough councils getting each their share of the proceeds. Every year the finance committee of the London County Council prepares an itemized budget which is exhaustively considered by the council in committee of the whole and voted as the councillors by a majority determine.

Its revenue.

The council has power to borrow money, and in this respect

Its borrowing powers.

it is in a somewhat different position from other local authorities. For the most part it goes directly to parliament for its borrowing powers, making application in a general bill which it promotes each year. In some cases, but not as a rule, the council may have to obtain approval from some central department before it can borrow for public improvements, for example, from the ministry of health in the case of housing schemes. But it does not seek borrowing authority by means of provisional orders.

The county chairman.

The administrative county of London has no mayor and no official corresponding to a mayor. The county council has a chairman but he is not an executive officer. He presides at council meetings but has no other powers.[1] The council itself is the executive authority. But since executive functions obviously cannot be performed by a body of 144 members, they are delegated by the council to its eighteen committees and these committees, in their turn, devolve a large part of the work on the permanent officials. The county's staff of permanent officials is a very large one, and until a few years ago all of its members were appointed by the council at its discretion. The higher officials continue to be so appointed, but the subordinate officials are now chosen by civil service competition.

Permanent officials.

Are the council's powers broad enough?

Complaint is sometimes made that the powers and resources of the London County Council, extensive though they appear, are not broad enough.[2] They are too narrow, it is said, for the governing body of so great a community. It is true that parliament has not been over-generous in dealing out authority to the council. It has preferred to divide powers among several hands rather than to concentrate them into one. The council has chafed somewhat under its limitations, and in 1911 it adopted a resolution calling upon parliament to make a careful enquiry into the whole question of London government with a view to a possible extension of the county's boundaries and a corresponding increase in the council's powers. A royal commission was accordingly appointed to make such an enquiry, and various proposals for the reorganization of metropolitan government were laid before it. But a majority of the commission reached the conclusion that no great improvement in administration

The Royal Commission of 1919.

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[1] He is, however, a very active and often a very influential factor in the council's work.

[2] C. F. G. Masterman, *How England is Governed* (New York, 1922), pp. 145-146.

would be obtained by a widening of the existing county boundaries or by a general change in present distribution of powers. Instead, they recommended that the London County Council and the metropolitan borough councils should get together and make some reapportionment of their existing functions. This they have the right to do without any action on the part of parliament. One member of the royal commission, it is interesting to note, suggested that something might be learned from city-county government in the United States. "The London County Council," he suggested, "might well give attention to the municipal reforms in progress in America during the last twenty years, different as the conditions may be." [1]

The metropolitan boroughs.

Mention has been made of the metropolitan borough councils which share in the work of London government. The administrative county of London is a federation of boroughs. In 1888, when the county was created, there were more than a hundred parishes and districts within its bounds, each with a vestry or small elective board which was vainly trying to cope with problems that had grown too big for it. Everybody appreciated the need for consolidating these small areas into large ones, but not until 1899 did parliament agree upon the details of a plan. In that year it passed the London Government Act by which all the territory comprised within the county (but not including the City) was organized into twenty-eight metropolitan boroughs. These metropolitan boroughs are very unequal in size because an attempt was made to follow the traditional parish boundaries. Each borough has a local government consisting of mayor, aldermen and councillors, all sitting together to form a borough council. The councillors are elected by the borough voters, the aldermen and the mayor by the council. The qualifications for voting, the procedure in nominations and elections, and the other incidents of organization, are almost identical with those in vogue in the ordinary boroughs of the country. Borough elections are fought out upon party lines which coincide with those of county elections, the chief contests during the last dozen years being waged between Labor candidates and their opponents. The Labor party has gained full control of the council in several of the boroughs, and in a few cases, notably in the borough of Poplar, the advent of Labor control was followed by a carnival of extravagance. But these instances have been quite exceptional. In general the Labor members of the metropolitan borough councils have not been conspicuous among the profligates.

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[1] See the memorandum of Sir Albert Gray in the *Report of the Royal Commission on London Government* (London, 1923), p. 135.

Their powers.

In the extent of their powers, metropolitan borough councils are more limited than the councils of ordinary cities. Their chief functions are those which had previously been exercised by the local vestries and boards. In general the borough council is the local highway authority, having charge of street-building, paving, lighting, and cleaning. The borough council also undertakes the construction and maintenance of subsidiary sewers and the enforcement of regulations of the Public Health Act. It is also authorized to erect workmen's dwellings, and some of the metropolitan borough councils have gone into this enterprise on a considerable scale. It has charge of public baths and wash-houses; it looks after the public libraries; and it controls the local cemeteries. The borough councils likewise have power to own and operate electric-lighting plants and more than half of them have taken advantage of this opportunity. With the approval of the ministry of health other powers may be transferred to the borough councils from the county council, or vice versa. But both the county and the borough councils have been reluctant to give up anything, hence very little transferring to power has taken place either way.

How the system works.

On the whole, the system of borough government within the administrative county has worked fairly well, although in recent years the whole system has been harshly criticized from some quarters. Local administration has unquestionably improved during these years, as any one who can remember the old system of government by parish vestries will readily agree. But the standard of membership in the metropolitan borough councils has never been very high, and it seems to be declining. This is not merely an after-the-war phenomenon, nor can it be attributed to the attitude of the Labor party in English municipal politics. It is due, in all probability, to a number of factors, such as the division of responsibility between the county and borough councils, the difficulty of arousing an active civic spirit in communities which are merely small blocks in a gigantic chessboard, and the absence of a sufficiently mixed population. In elucidation of this last statement it should be explained that some of the boroughs are solidly peopled by Londoners of the poorer class. At any rate it is rather significant that you can read a London newspaper day after day and see nothing about the work of these borough councils,—unless one of them happens to do something eccentric.

The metropolitan police district.

Neither the county council nor the borough councils has anything to do with the policing of London. The old City has its own police, with a watch committee of the common council in charge of it. Surrounding the city and comprising a circular area of about 700 square miles, is the metropolitan police district. It includes the whole of the county of London and parts of several other counties. This district was first established by Peel's Act of 1829, a statute which gave London its first body of professional, uniformed police. At the head of the district is a police commissioner who is appointed by the crown. He is not chosen for any definite term but holds office during the pleasure of the home office. Nor is the appointment political; the commissioner is almost invariably a man of long administrative experience. He has three assistant commissioners, appointed like himself. The metropolitan police force now consists of over 20,000 men of all ranks, thus making it the largest police force in the world. But the cost of maintaining this huge establishment is considerably less than the amount spent upon the police department of New York City, which is only about half as large. The commissioner has entire charge of organization and discipline; but the financial administration of the force is intrusted to a receiver, appointed by the crown, who is responsible for the erection and management of all police stations, the awarding of contracts, the purchase of supplies, and for all other matters outside the actual work of preserving law and order. The high standard of efficiency maintained by the metropolitan police force of London is a matter of world-wide knowledge.[1]

These, then, are the authorities that govern the three Londons. In point of importance the county council stands first, but the powers of the metropolitan borough council come closer, perhaps, to the convenience of the citizens. It is a complicated affair, this government of the English metropolis, more so than is the government of any other city in the world.

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[1] See the comments upon it in Raymond B. Fosdick's *European Police Systems* (New York, 1915), passim.

By far the most useful source of information on all phases of English local government is the volume containing Part I of the *Minutes of Evidence taken before the Royal Commission on Local Government* (London, 1923). This volume of over two hundred pages contains the testimony given before the commission by Mr. I. G. Gibbon, C. B. E., of the ministry of health. It embodies a very large amount of data, both historical and descriptive, and is invaluable to serious students of the subject.

Among general books on the subject, mention may be made of Sidney and Beatrice Webb's *English Local Government* (4 vols., London, 1906-1913), which is largely a historical survey; Josef Redlich and F. W. Hirst's *Local Government in England* (2 vols., London, 1903); H. E. Smith, *Municipal and Local Government Law* (London, 1923); Percy Ashley's *Local and Central Government* (2nd edition, London, 1922); and John J. Clarke's *Local Government of the United Kingdom* (London, 1922). This last-named book contains (in its appendix) a brief classified bibliography. A useful work for reference on special topics is J. Scholefield's *Encyclopedia of Local Government Law* (9 vols., London, 1905-1923), and attention may also be called to the *Report of the Sub-Committee on Local Government* issued by the Ministry of Reconstruction in 1918. G. D. H. Cole's volume on *The Future of Local Government* (London, 1921) sets forth a plan for a complete reconstruction of the existing system.

The most convenient source of information concerning the government of the British metropolis is P. A. Harris, *London and Its Government* (London, 1913). But mention may also be made of Sir Aston Webb's *London of the Future* (New York, 1921). Much interesting material is contained in the Annual Reports of the London County Council and in the *Report of the Royal Commission on London Government* (London, 1923). The volumes containing the testimony taken by this commission are also available, and they form a storehouse of material which even the most diligent student of the subject can hardly hope to exhaust.

CHAPTER XVII

SCOTLAND AND IRELAND

> My poor opinion is that the closest connection between Great Britain and Ireland is essential to the well-being, I had almost said, to the very being of the two kingdoms. At bottom, Ireland has no other choice, I mean no other rational choice.—*Edmund Burke.*

The beginnings of Scotland.

Scotland, like England, was populated by Celtic tribes when the Romans first landed on the shores of Britain. But the Roman legions never pushed their way into the northern sections of the island and Scotland never became a part of the great Latin empire. Nor did the Saxons, when they came to Britain from across the waters, succeed in conquering all of Scotland. The Scottish highlands continued to be inhabited by people of the Celtic race, although some Saxons worked their way into the lowlands which constituted the southern part of the country. The various tribes or clans of Scotland gradually became united under a monarchy with its capital at Edinburgh. In due course, moreover, parliamentary institutions were developed, not widely different from those of England.[1]

Scotland in the Middle Ages.

Even before the Norman conquest the Saxon kings of England claimed a shadowy protectorate over the kingdom of the Scots, but this claim was never enforced. The Normans, when they came, left Scotland alone, but in 1286 Edward I of England undertook to settle a dispute which was then raging in Scotland concerning the succession to the Scottish throne. This precipitated a quarrel, and Edward invaded Scotland. His invasion was successful and Scotland passed for the moment under the

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[1] Wales is commonly called a "principality" but for all governmental purposes it is united with England. Edward I, in 1284, formally annexed Wales, but the indigenous Welsh institutions were left in existence for the time being, although English law and legal procedure were partially introduced. It was not until 1535 that Wales was given representation in the House of Commons. Two centuries later (1747) it was made a rule that the mention of England in an Act of Parliament should be taken to include Wales.

English crown. This control was of short duration, however, for England presently became involved in a war with France and the Scots took advantage of the occasion to throw off the English suzerainty. After a protracted struggle they won a victory at Bannockburn (1314) which enabled them to restore the kingdom to its ancient independence. But Anglo-Scottish hostility was not brought to an end by this triumph and there were frequent clashes between the two countries during the next three hundred years. Scotland, being the weaker power, found it advisable to cultivate relations with France, and at times the Scots became the allies of the French in their wars with England.

The royal union with England in 1603.

Throughout the Middle Ages and into the modern period, at any rate, Scotland managed to retain her independence. It happened, however, that the royal families of England and Scotland became related by the intermarriage of members who were not immediately in line for either throne. Then, on the death of Queen Elizabeth in 1603, there were no Tudor heirs at hand and the Scottish people had the satisfaction of seeing their own king, James VI, inherit the throne of England.[1] He proceeded to Westminster, took the title of James I, and inaugurated in England the ill-starred dynasty of four Stuart kings. In this way Scotland and England became united under the same line of monarchs, but each retained its own parliament. The same king dealt with one parliament at Edinburgh and with another at Westminster.

This royal union naturally put an end to the old hostility and brought the two countries into better relations. It stood the strain of the English civil war, the Cromwellian dictatorship, the expulsion of James II, and the establishment of the Hanoverian dynasty. Yet it was not regarded as altogether satisfactory by either country. It was a union without unity. The Scots were especially desirous of a share in the industrial and commercial prosperity which England was deriving from the trade with her colonies; they also desired the privilege of freely shipping all their products into the English market. England was not willing to concede either of these things unless Scotland would submit to virtual annexation. So relations once more became strained and in 1704 the Scottish parliament announced that unless something were done it would proceed to choose a monarch of its own.

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[1] James VI was the son of Mary, Queen of Scots, who was a first cousin of Queen Elizabeth.

The parliamentary union of 1707.

To forestall an impending separation, therefore, commissioners from both countries were appointed to reach a common ground. They managed to frame a treaty embodying concessions on both sides, and this treaty was approved in 1707 by the parliaments concerned. Briefly it provided for the organic union of the two countries, under the name of Great Britain, with a single parliament at Westminster. The Scottish parliament was abolished, and Scotland obtained representation in both the House of Lords and the House of Commons. She was permitted to retain her own system of laws and legal procedure, her own religion and local institutions. In return for the abolition of their parliament the Scottish people were granted full freedom of trade with England and with the English colonies. It was a fair bargain; one country obtained political and the other economic advantages. Scotland traded her parliament for pounds, shillings and pence. She did it with her eyes open. And the Scottish people, on the whole, have not regretted the agreement of 1707. The union ushered in an era of material prosperity which lasted for a long time and made the southern part of Scotland one of the richest sections in the United Kingdom.

Present government of Scotland.

The government of Scotland, as arranged by the Act of 1707, has remained unaltered in its essential features to the present time. Until 1885 the home secretary was primarily responsible for handling Scottish administrative affairs in London, but in that year a secretary for Scotland was established. This official is now the Scottish representative in the British ministry. Like other members of the ministry he is chosen by the prime minister. Invariably he is a Scotsman, although there is no legal requirement to this effect. In a general way the secretary is responsible for the supervision of administrative affairs in Scotland, in which work he is assisted by various functionaries and boards, including a lord advocate, an undersecretary for Scotland, a solicitor-general, a board of health, and a committee of the privy council for education in Scotland. All laws passed by the British parliament apply to Scotland unless otherwise stipulated, and many things are uniform in the two countries, as, for example, the systems of national taxation and national defence.

On the other hand, many things are different, because Scotland retains her own system of civil law and procedure, her own hierarchy of courts, her own ecclesiastical organization and her own distinctive scheme of local government.[1]

The representation of Scotland in parliament.

Scotland, as has been said, is represented in the House of Lords by 16 Scottish peers and in the House of Commons by 74 members, which is about what the population warrants. In both chambers the Scottish members have exactly the same status as the English, and are eligible for appointment to all ministerial positions. As a rule they have been well represented in British ministries, so well, in fact, their prominence is a matter of frequent remark by outsiders. Scotland has had a larger share in British administration than her numbers entitle her to have.

Success of the Scottish union and failure of the Irish union contrasted.

On the whole the feeling between these two sections of the United Kingdom has grown increasingly cordial during the period since 1707. Various new concessions to Scotland have been made. There has been no clamor for Scottish home rule, or for a Scottish republic. There has been no Sinn Fein movement in Scotland. This is the more noteworthy when one recalls the fact that Saxon and Scot were enemies for over five hundred years. Englishmen hoped that the union of England with Ireland, which was accomplished in 1800, would produce similar results, but these hopes have not been fulfilled.

Reasons for this.

The reasons for this are not far to seek. Scotland was never conquered by England; she entered the union a free country; her people accepted a changed political status in return for fair compensation. Apart from merely sentimental considerations, Scotland lost nothing by joining hands with England. No intelligent Scotsman of today contends that his country would now be better off if the treaty of 1707 had been rejected. Ireland went into the union under vastly different circumstances. The island was invaded and conquered by English armies; the line of Irish kings was brought to an end by force; and the powers of the Irish parliament were reduced to a shadow. This parliament was allowed to continue its existence, but it did not represent the majority of the Irish people and it could do nothing that was not subject to review at Westminster. The union of 1800, moreover, was put through the Irish parliament by resort to political manipulation. Ireland derived from the union of 1800 no commercial advantages of any account. It was a jug-handled bargain. Ireland gave up her parliament, mere wraith of a parliament that it was, and got very little in return. Finally, the difference in religious belief made it impossible for this union to work out as the other had done.

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[1] The Scottish cities and boroughs, for example, are not governed by mayors, aldermen and councillors, but by provosts and baillies. Scots law is largely based upon Roman law and has relatively little kinship with the common law of England.

Ireland's troubles with England go back a long way before the union of 1800. They are almost primæval. It is not possible to understand the Irish question, as it exists in our own day, without some knowledge of its antecedents. In no other country, with the exception of Poland, are the political conditions of the present so largely a heritage of the past. This past is one long tragedy. Ireland blames England for it all; and England blames Ireland for most of it. The truth is that both countries have been responsible for Ireland's vicissitudes, in what proportion will doubtless remain a matter of controversy to the end of time.

Early history of Ireland.

Ireland, at the dawn of history, was peopled by Celts, the kinsmen of the Scots and of the ancient Britons whom the Saxon invaders drove out of England. These Celts had not united into a single Irish monarchy but were being governed by several native rulers when Henry II of England crossed the Irish Sea in 1171-1172 and conquered part of the island, more particularly the region around Dublin which thereafter came to be known as The Pale. In this area English law and English judicial procedure were gradually established. There was also some immigration from England to The Pale, but the newcomers quickly became assimilated despite all attempts to prevent this[1] In due course a parliament was established within The Pale, but its authority was greatly limited at the close of the fifteenth century by the statute known as Poyning's Law. This law provided that all English statutes should apply to Ireland, that the Irish parliament should never be summoned except with the prior consent of the English government, and that when summoned its acts should be subject to the approval of the king in council. Many years later the English parliament followed this with a

The Pale.

Poyning's Law.

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[1] In 1366 the statute of Kilkenny prohibited the English from intermarrying with the Irish or adopting their language or dress.

declaratory act (1720) which asserted its right to legislate for Ireland on any and all matters.

By these and various other measures Irish self-government was reduced to a phantom. Executive authority was vested in a lord deputy, appointed by the crown and not responsible to the Irish parliament. Neither the lord deputy nor his parliament exercised any real authority outside The Pale. In these outer and relatively untamed regions the people gave their allegiance to various local chieftains or "kings" who were often at war with one another but always ready to unite against the English. Irish agriculture was handicapped by this ever-recurring warfare and also by the prohibition of various Irish exports. The exporting of Irish wool was hindered, for example, and when the people set themselves to manufacture their wool into cloth the exporting of cloth was also forbidden (1699).

The settlement of Ulster.

Meanwhile various happenings in Ireland accentuated the strained relations between the two countries. During the reign of Henry VIII (1509-1547) England broke relations with the Papacy and became Protestant, while Ireland remained Catholic. This, in itself, widened the breach between the two countries. Then, a little later, the English government undertook to subdue the northern part of the country, and when the people resisted their lands were confiscated. Early in the reign of James I (1611) the great plantation of Ulster was laid out and settled by emigrants from England and Scotland who became possessors of the confiscated lands. As the new settlers were Protestants this action divided the island into two unequal religious camps and laid the foundation for much later bitterness.

Ireland and Cromwell.

Then came the struggle between Charles I and the English parliament. Ireland seized the opportunity to rise in revolt and was almost successful. England was dislodged from all save Dublin. But the day of reckoning was soon to arrive, for when Cromwell felt himself master of England he proceeded to Ireland on a mission of reconquest and retaliation. There he performed his task with a rigor which Ireland has not forgotten to this day. Extreme penalties were imposed upon the island by the English government, enormous tracts of land being taken from their owners and given to English military officers. This Cromwellian Settlement was not a settlement at all, for it did not break the spirit of the Irish people but merely left them in a bitterly hostile frame of mind, with a determination to undo the wrong at the first opportunity. Such an opportunity seemed to be at hand in 1689 when James II, having been driven from the English throne, landed in Ireland and called upon the people for aid. Once more all Ireland, except Ulster, responded. But James Stuart proved a frail reed on which to lean the Irish hopes. He and his army were overwhelmed at the Battle of the Boyne (1690) and Ireland once more had occasion to learn what *væ victis* meant. The island was now so thoroughly cowed and enfeebled that no more uprisings took place for over a century.

Ireland and William of Orange.

During this period of relative peace the attitude of the English authorities softened somewhat. England had troubles of her own in the last quarter of the eighteenth century—troubles in America, in India, and in Europe. The American Revolution also carried its lesson to Westminster. So, in 1782, the English parliament renounced its claim to make laws for Ireland and repealed the restrictions which had been imposed by Poyning's law. A year later it virtually conceded the supremacy of the Irish parliament and of the Irish courts within their own territorial jurisdiction. This seemed to give Ireland virtual home rule. "Ireland is a nation," cried Henry Grattan in ecstasy. But it was home rule with a query. The English crown continued to be represented in Ireland by a viceroy who, although technically responsible to the Irish parliament, was in reality controlled by the English House of Commons inasmuch as he was a member of the English cabinet. This was a wholly impractical and anomalous arrangement, bound to engender friction as time went on.

Ireland during the eighteenth century.

Things went along without ruction for a dozen years or more. Ireland began to grow prosperous; her commerce expanded, and her industries showed signs of revival. Then the ill-fortune which has dogged the Irish nation through so many centuries showed its sinister form once more. The French Revolution gave Ireland an opportunity which her people could not resist. Not only did it send a wave of republican sentiment over the country but it brought England into a critical war with France. And "England's emergencies are Ireland's opportunities"—so an old Irish saying goes. So the French revolutionists carried their propaganda to Ireland, convinced the people that with England's back to the wall they need only to strike for deliverance, and

Irish Rebellion of 1798.

swept them into the Irish Rebellion of 1798. England's back may have been to the wall, but her hands proved to be free and the rebellion was crushed in a whirl of reprisals.

The Act of Union.

Thereupon the English cabinet decided that Ireland should be put under bonds for good behavior. England must take no future chance of being stormed from the rear. Accordingly the prime minister, William Pitt the younger, prepared a plan for the parliamentary union of England and Ireland. An act of union was drafted and was submitted to the Irish parliament for acceptance. Outside of Ulster the public sentiment of Ireland was against the measure, nevertheless by dint of bribery, intimidation, coercive persuasion, and other corrupt practices it was forced through the legislative chambers in Dublin. It is said that Pitt spent nearly a million pounds sterling to put the measure through. Some members of the Irish parliament got titles, some got lucrative offices, some were bribed outright. In all fairness to Pitt it should be explained that these were the political methods of his time. He was not unfriendly to Ireland and expected that his union would be followed by various conciliatory measures, but he found the opposition too great.

Its provisions.

By the terms of the union the Irish parliament was abolished, and Ireland attained representation in both Houses at Westminister—twenty-eight members in the House of Lords and one hundred in the House of Commons. Executive authority was to be exercised through a viceroy, representing the crown. As such he was responsible, through the ministry, to the British House of Commons. Irish laws and courts were unaffected by the union, save that the British House of Lords now became the court of last resort. There were almost no economic compensations. The alien landowner continued to possess most of the country. The division of religious sympathies between England and Ireland made cordiality impracticable. Over the greater part of Ireland (that is, outside of Ulster) there was no industrial revolution such as took place in England and Scotland during this period.

The half century after the Union.

Save for a single flare-up in 1803, the Act of Union was followed by more than forty years of relative quiet. Amid the great economic changes which took place during this era, Ireland sat silent, depressed, subdued. There were some local disorders but they were easily quelled. Daniel O'Connell rose to be the political leader of his people during this period, but he did not control the Irish members in the British House of Commons. Until after 1832 the suffrage was as narrow in Ireland as in England, hence the Irish members did not represent the body of the Irish people. Many of them, as in England, were named by patrons or chosen by close corporations. As the nineteenth century wore on many Irishmen began to emigrate to the United States and to the British colonies, and after the potato famines of 1846-1849 this exodus assumed huge proportions.

The Home Rule movement.

An agitation for the repeal of the union, led by O'Connell, had been set afoot as early as 1841, but for many years it made slow progress because it was associated in the English mind with republicanism and revolution. In 1873, however, an association calling itself the Home Rule League was formed with the avowed aim of securing by peaceful and parliamentary means a reasonable measure of Irish self-determination. This league undertook to secure the election of home-rulers to parliament and under the leadership of Charles Stewart Parnell succeeded in creating an Irish Nationalist party in the House of Commons. The Nationalist party increased its numbers to the point where it eventually held the balance of power, and in 1886 Parnell persuaded the English Liberals to bring in the first home rule bill.[1]

The first home rule bill (1886).

The first home rule bill provided for the establishment of an Irish parliament in Dublin, with the right to make laws for Ireland, and to levy taxes except customs duties and excises. Executive power was to remain in the hands of a lord lieutenant, appointed by the crown, but responsible to the parliament of Ireland. All matters of concern to the British empire as a whole, and not to Ireland alone, were to be dealt with by the British parliament. In this parliament Ireland was no longer to be represented although she was to contribute one-seventeenth of all imperial expenses. In other words Ireland was to be taxed without being represented.[2]

How it fared.

This measure did not wholly satisfy the Nationalists, but they supported it. Much less did it satisfy some of Gladstone's Liberals. These anti-home-rule Liberals, calling themselves

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[1] The Nationalists at this time had 83 members in the House of Commons. See *above*, p. 235.

[2] This feature of the bill was vigorously criticized from all quarters. An attempt to deal differently with the problem of Ireland's share in imperial legislation was made in the Second Home Rule Bill of 1893. See *below*, p. 322.

Liberal-Unionists, bolted Gladstone's leadership, voted against the bill on its second reading, and defeated him in the House of Commons. A general election thereupon took place and at this election the Liberals were overwhelmed by a coalition of Conservatives and Liberal-Unionists. A Unionist ministry under Lord Salisbury then came into power and the first home rule bill was dropped. But home rule continued to be an issue in British politics. The Liberals did not forsake the cause, and at the next general election (1892) they found themselves once more in power, although dependent upon the Irish Nationalists for a majority in the House.

The second home rule bill (1893).

So Gladstone in 1893 brought in his second home rule bill. It differed from its predecessor in some important respects, more particularly in providing that Ireland, besides having a parliament of her own, should be represented by eighty members in the British House of Commons. These members, however, were not to vote on matters concerning England and Scotland, but only on questions in which Ireland could be shown to have an interest. The Irish members were thus to be in the House on some questions, and out of it on others, hence this arrangement was dubbed the "in and out" provision of the bill. English public opinion did not like this feature. It was looked upon as a menace to the whole system of ministerial responsibility—which in truth it was. A ministry might have a majority in the House of Commons on some questions and no majority on others. The "in and out" arrangement would probably have made it impossible for any cabinet to remain in power. Nevertheless the House of Commons passed the bill and sent it to the House of Lords where it was rejected by a large majority. The Liberals did not press the issue farther, because there was lukewarmness in their own ranks, and Mr. Gladstone was presently induced to retire from the leadership. His retirement was followed by a Unionist victory at the polls and for the next ten years the friends of home rule were on the Opposition side of the House.

The third home rule bill (1912-1914).

But the pendulum of politics eventually swung the other way and the Liberals came back into office. Having in mind what had happened in 1893, they did not bring in the third home rule bill until after they had curbed the powers of the Lords by the Parliament Act of 1911 and had thus made sure that their work would not be undone. The provisions of this third home rule bill were much like those of the second, notably as respects the retention of the "in and out" arrangement.[1] There was to be an Irish parliament of two chambers, representing the whole of Ireland (including Ulster), with jurisdiction over all strictly Irish affairs. Certain matters, such as a military and naval policy, foreign affairs, treaties, and customs duties, were exclusively reserved to the British parliament. The lord lieutenant of Ireland, representing the crown, was to act solely on the advice of the Irish cabinet which, in turn, was to have the confidence of the Irish parliament. This bill went through the Commons in 1912, but was once more rejected by the Lords. Accordingly, under the provisions of the Parliament Act it could not go into force until the expiry of two years, that is to say, until the summer of 1914.

The Ulster opposition.

Meanwhile Ulster came to the front with a threat of armed resistance if her people were subjected to the jurisdiction of a Dublin parliament. A strong Unionist organization was formed in Ulster; large numbers of volunteers were enrolled, and there was every indication that the inauguration of home rule in Ireland would be followed by a civil war between Ulster and the rest of the country. But notwithstanding this serious danger the House of Commons gave the home rule bill its last passage over the two-year veto of the Lords.

Outbreak of the world war.

No sooner had it gone on the statute book in the summer of 1914, however, than Western Europe launched into the world war. At once the friends and the foes of home rule agreed to call a truce on this question. Leaders of all political parties came together and agreed that the Irish question, like all other domestic controversies, should be temporarily shelved in order that the British empire might devote its entire strength to the great struggle. More specifically it was agreed that the home rule act, although finally enacted, should not be put into operation until the close of the war.[2]

During the first year of the war little was heard of the Irish question. Ireland was quiet, and when Ireland is quiet

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[1] Ireland, according to the third bill, was to be represented in the British parliament by 42 members only.

[2] There was also an understanding that before putting the measure into effect the ministry would secure from parliament some concession to the desires of Ulster.

Ireland during the war.

there is usually some trouble brewing. Although the Nationalist leaders, at the outbreak of hostilities, had pledged Ireland's support to the Allied cause, it soon became apparent that they could not carry the country with them. In Britain's emergency there were many young Irishmen could see nothing but the best opportunity that had come to Ireland since Napoleon's day. So they urged the striking of a blow for complete independence, for separation from the British empire, for an Irish republic. Obstacles were thrown in the way of enlisting Irishmen for service with the allies, and secret negotiations with Germany were opened by one of the Irish leaders, Sir Roger Casement. The Germans promised arms, munitions, and money to aid the uprising.

The Sinn Fein movement.

The driving force in this movement for an Irish republic was the organization known as Sinn Fein.[1] Sinn Fein had been in existence for some years prior to 1914, but had gained relatively few recruits until that year, when the great European conflagration seemed to presage the incoming of a new world order. With mobilizations going on everywhere, Irishmen (particularly young Irishmen) could not resist the contagion. By the thousands, therefore, they deserted the Nationalist or home rule party and enrolled themselves in the more radical ranks of Sinn Fein. The organization grew to large proportions and its leaders only awaited a propitious hour to strike.

The Easter rebellion (1916).

As it turned out, the hotheads got out of control and struck too soon. Before there was any certainty of German coöperation an insurrection broke loose in Dublin and the Irish republic was proclaimed (Easter Monday, 1916). A hopeless venture from the start, the Easter rebellion was localized and put down within a few days. Several of the leaders were executed. But the quelling of this rebellion did not settle anything and Ireland remained on edge until the end of the world war. At the general election which followed the armistice the country showed its temper by electing seventy-three Sinn Fein members to the British House of Commons and pledging them not to take their seats. Instead they were instructed to assemble in Dublin as a parliament of the Irish republic.

These ongoings made it apparent that the Irish question could

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[1] The words Sinn Fein (pronounced "Shin Fane") are Erse, or Old Irish for "ourselves alone."

The fourth home rule measure, 1920.

not be settled by putting into operation the home rule act of 1914. Ulster did not want it; neither did the rest of the country. The former objected that the Act went too far, the latter that it did not go far enough. Early in 1920, therefore, the British prime minister, Mr. Lloyd George, laid before parliament a new measure intended to supersede the still-dormant home rule act of 1914. The outstanding feature of this new measure was its provision for two separate governments in Ireland, one for six counties in Ulster and the other for the remaining twenty-six counties of Ireland. Each of these two areas was to have its own parliament, the Ulster parliament sitting in Belfast and the parliament of Southern Ireland in Dublin. Each parliament was to have the usual powers within its own field of jurisdiction. In addition there was to be a federal council made up of forty members, twenty elected by each of these two Irish parliaments. This federal council was to have such powers in relation to all-Irish affairs as the two Irish parliaments might agree to bestow upon it. Certain important matters, however, were reserved for the exclusive jurisdiction of the British government. Among these were national defence and foreign relations.[1]

Southern Ireland's active resistance.

This new measure passed parliament without mishap and was accepted by the people of the six Ulster counties who proceeded to set up their new government. In the southern counties, however, the popular opposition to the scheme was so intense that no progress could be made. The people would neither elect members to the proposed parliament, nor carry suits to the courts, nor obey any order of the British authorities. Instead the masses of the people adhered in their allegiance to the Irish Republic, obeyed the orders of its officials, and carried their controversies to its own courts. For a time the English government tried coercion, sending large bodies of troops to Ireland in an endeavor to assert its authority. Guerilla warfare ensued over a large portion of the country, with much destruction of life and property. The titular officials of the republic were kept "on the run," the republican courts were broken up whenever found, the whole island was in a turmoil. But in due season the British government became convinced that Ireland could not be coerced, at any rate not without an enormous outlay, and the Irish leaders also reached the conclusion that Britain could not be expelled. Then, and only then, did the time become ripe for negotiations on a give-and-take basis. It had taken nearly seven hundred years to bring the two countries into this frame of mind!

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[1] The significant portions of this Act are printed in D. P. Barrows and E. M. Sait, *British Politics in Transition* (1925), ch. viii.

The treaty of 1921 and the new Irish constitution.

So negotiations for a treaty began in 1921. Certain members of the British cabinet and an equal number of delegates representing the Dail Eireann, or parliament of the Irish Republic, undertook the work of reaching a compromise, and eventually they were able to agree upon the draft of a treaty. This agreement was duly submitted to the British Parliament and to the Dail, by both of which it was ratified. It provided, among other things, that an Irish constitution should be prepared and that when this constitution had been accepted by both sides it should go into effect. The constitution was duly framed by a group of Irish leaders; it was then ratified by the newly elected Dail Eireann, and went into effect on December 6, 1922.[1]

General significance and nature of the constitution.

This constitution of the Irish Free State deserves more than a mere paragraph or two, for it contains many novel and interesting features. Although the treaty of 1921 provided that Ireland should have the same constitutional status . . . as the Dominion of Canada, the Irish constitution differs widely from the Canadian, and indeed from the constitution of every other country. It is rather strongly academic in tone, and smacks of the lamp, yet the Irish constitution embodies some provisions which are of great interest to the student of government, notably the combination of cabinet responsibility with permanence of tenure, and the method of selecting members of the upper legislative chamber.

From America, by the way, it borrowed nothing. Although the relations between Ireland and the United States have been close and friendly for many years, the framers of the Irish constitution took no stock in any of those features which Americans regard as the salient characteristics of their own government, such as the principle of checks and balances, the qualified executive veto, senatorial confirmation of appointments and of treaties, and the elective state judiciaries. They drew to a much greater extent from England than from America.

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[1] A copy of this document may be found in Darrell Figgis, *The Irish Constitution* (Dublin, 1922).

The constitution summarized.

The bill of rights.

The constitution of the Irish Free State is operative over the twenty-six southern counties of Ireland. It does not apply to the six Ulster counties which continue under the Act of 1920. It begins with the statement that the Irish Free State is a co-equal member of the British commonwealth of nations, that all powers of government are derived from the people and shall be exercised in Ireland in accord with the constitution.[1] Then follows a short bill of rights which defines Irish citizenship, establishes the Irish language as the national language (although English is to be equally recognized as an official language), forbids the granting of titles (with certain exceptions), guarantees the writ of habeas corpus, declares for the inviolability of persons and property, freedom of conscience and worship, freedom of speech, and freedom of assembly. It also provides that there shall be no endowment of religion, and on the other hand "no discrimination as respects state aid between schools under the management of different religious denominations." All citizens, it declares, have the right to free, elementary education.

The Irish parliament.

The chamber.

Then the constitution proceeds to establish the frame of government. A parliament is established with power to make laws for the peace, order, and good government of the state. This parliament consists of two chambers,—a chamber of deputies and a senate. The size of the chamber is not rigidly fixed, but the senate has fifty-six members plus two members for each university.[2] Members of the chamber are elected from districts or constituencies (at least three from each constituency) on a basis of universal suffrage and by a plan of proportional representation.[3] The term is four years but the chamber may be dissolved by the governor-general within that time on the advice of the executive council.

The senate.

The Irish senate embodies a novel experiment in the creation of a second chamber. According to the constitution it is to be composed of "citizens who have done honor to the nation by reason of useful public service, or who, because of special qualifications or attainments, represent important aspects of the nation's life."[1] But how is the selection of such members to be assured? Every three years a panel or list of forty-eight eligibles is prepared by the chamber and the senate acting separately.[2] The chamber contributes thirty-two names of this panel, and the senate sixteen. In selecting the names, both branches vote according to the principles of proportional representation. In addition there are placed on the panel the names of all persons who have been at any time members of the senate (including members about to retire), provided such persons signify their desire to be included. Thus the panel must contain at least forty-eight names and may contain a much larger number.

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[1] Provision is made, however, that the constitution is to be construed with reference to the treaty of 1921 and that anything done contrary to this treaty shall be void.

[2] The chamber must not have less than one member for every 30,000 population nor more than one member for every 20,000. The present membership is 153. The senate now has 60 members.

[3] All citizens of the Irish Free State over twenty-one years of age, without distinction of sex, are qualified to vote. The system of proportional representation is that commonly known as the Hare System, or plan of single, transferable vote.

The election of senators.

From this panel, at a senatorial election which is held every third year, fourteen senators are chosen by the people for a twelve-year term. In other words one-quarter of the senate is renewed triennially. For this election the entire Irish Free State constitutes a single district, and the counting of the votes is conducted according to the rules of proportional representation.[3] In addition to the fifty-six senators chosen in this way, each Irish university elects two senators by vote of its graduates, the election taking place every six years.

Summary.

This method of choosing senators at large, by popular vote, but restricting the choice to the confines of a panel or list, is unique. Ireland could not create a senate on the American model, for there are no states to serve as election districts. An Irish House of Lords was naturally out of the question, and the framers of the constitution did not care for the method by which the senate is organized in France. So they devised their own plan, and displayed a good deal of courage in doing it. How it will work out is problematical.

Together these two chambers form the lawmaking organ of the Free State. But their legislative powers are not unlimited. The treaty of 1921 provides, for example, that the Irish army shall not be increased, in proportion to the Irish population, beyond the ratio which the British army bears to the population of Great Britain. It also provides that in time of war or of strained relations with a foreign power, the British government may take over any Irish harbor for defence purposes. Finally, it stipulates that every member of the Irish parliament shall take an oath to be faithful to the king.

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[1] Article 29.

[2] The age limit for the panel is 35 years.

[3] If a vacancy occurs between elections, it is filled by vote of the senate.

The process of legislation:

As regards all other matters of purely Irish concern, however, the parliament of the Free State is free to legislate as it pleases. The two chambers of this parliament ordinarily concur in the making of laws, but their powers are not equal. In the matter of money bills the chamber has exclusive authority.[1] Every money bill, nevertheless, is sent to the senate after passing the chamber, and the senate may make recommendations. Within fourteen days, in any event, it must be returned to the chamber, which then passes the bill "accepting or rejecting any or all of the senate's recommendations," whereupon it becomes a law. But while the chamber has the sole initiative in money bills, it is restricted by the old English rule that no money shall be voted unless the purpose of the appropriation has in the same session been recommended by a message from the representative of the crown, acting on the advice of the executive council.[2] Furthermore the chamber, to ensure that no money is spent without its approval, appoints a comptroller and auditor general who audits all accounts and makes a periodical report. He cannot be removed except for stated misbehavior or incapacity, and then only on resolutions passed by both the chamber and the senate.

Money bills.

Other bills.

Bills, other than money bills, may be originated in either House. When passed by one they are sent to the other and may be amended at will. But in all cases of disagreement between the two houses, the will of the chamber ultimately prevails. If the chamber rejects a bill which originated in the senate, that is the end of it. But if the senate rejects or adversely amends any ordinary bill which originated in the chamber, the bill becomes a law (in the form last passed by the chamber) on the expiration of two hundred and seventy days after it was first laid before the senate. The Irish senate is, therefore, like the British House of Lords in that it (1) has no authority as respects money bills, and (2) must ultimately give way to the lower chamber on any controversy over other bills. An interesting provision of the Irish constitution is that which stipulates, however, for a joint session of the two houses (on request of the senate) for debating, but not voting, upon any measure (other than a money bill) that may be the subject of controversy between the two.

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[1] The constitution defines what bills shall be deemed "money bills." In case of controversy the matter is referred to a committee consisting of three members of the chamber, three members of the senate, with the senior judge of the Supreme Court serving as chairman.

[2] Article 36. See also *above*, p. 218.

The initiative and referendum.

The Irish constitution makes provision for direct lawmaking by the people. Any bill enacted by the Irish parliament may be suspended for a period of ninety days on the written demand of two-fifths of the members of the chamber, or a majority in the senate. If, meanwhile, a petition signed by at least one-twentieth of the qualified voters ask for a referendum on the measure, it must be withheld for submission to the people at the polls, and the decision of the people is conclusive. The measure must also be submitted to a popular vote if such action is requested by a three-fifths majority of the senate. But the foregoing provisions do not apply to money measures, or to laws which are declared by both houses to be necessary for the immediate preservation of the public peace, health, or safety.

The constitution does not go into details as regards the operation of the initiative. It merely authorizes the Irish parliament to make such provision by law. But it stipulates that a petition of fifty thousand voters shall be sufficient to propose a law, or an amendment to the constitution, and that all such proposals, if rejected by the Irish parliament, shall be submitted to the people for their decision. Further details concerning the process of direct initiation of laws by petition of the voters have now been provided by law.

Amendments to the constitution.

Amendments to the constitution of the Free State may be originated and adopted by the Irish parliament, or may be initiated by a popular petition; but in no case does an amendment become effective until it has been submitted to the people and ratified by them. This ratification must be by either (1) a majority of all the registered voters, or (2) a two-thirds vote of all those actually voting. No amendment is valid, moreover, if it contravenes the Anglo-Irish Treaty of 1921.

The executive.

So much for the Irish parliament and its powers. Notice next the structure and authority of the executive. Executive authority is declared to be vested in the king, but provision is made that such authority shall be exercisable in accordance with the law, practice and constitutional usage governing the exercise of the executive authority in the case of the Dominion of Canada, by the representative of the crown.[1] In other words the king, on the advice of the British prime minister, appoints a governor-general to represent the crown in Dublin, and this governor-general has exactly the same term and powers as his prototype in Canada. These powers, in the case of Canada, have been well-settled by more than a half-century of usage and are now not open to dispute. In brief they may be summed up by saying that the governor-general in Canada has the same powers as the king in England.

The executive council.

The Irish constitution makes provision for a cabinet and also for a prime minister, but it does not use either of these terms. It calls them executive council, and president of the executive council, respectively. Provision is made that the executive council shall be responsible to the chamber. But this does not mean that all the members of the executive council, of whom there are twelve, shall go out of office on an adverse vote, as is the practice in England. On the contrary the Irish constitution establishes a unique and peculiar arrangement in this matter of ministerial responsibility. It provides that four members of the executive council (it calls them ministers) shall have seats in the chamber and that the remaining eight shall not be members of either house. The chamber may, however, from time to time determine that a particular minister or ministers (not exceeding three) may be members of parliament, in addition to the four above mentioned. In other words it would be possible to have seven ministers with seats in the Irish parliament (with at least four in the lower house) and five ministers without seats. In any event the president of the executive council (prime minister) and the vice president must be among the four who have seats in the chamber.

A unique feature.

How ministers are chosen.

The president of the executive council is appointed by the governor-general on nomination of the chamber. In other words he is the leader of the majority party in the chamber. So his method of selection corresponds in general to that of the prime minister in England. Like the British prime minister, moreover, he nominates those other ministers who are members of parliament, and they are then appointed by the governor-general.

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[1] Cf. *below*, chapter xix. Notice the correct uses of the terms "the king" and "the crown" in this provision. Executive authority is vested in the monarch, but it is exercised by the crown (in other words by the king on the advice of the British prime minister) through a representative.

Now comes, however, a distinctive feature of the Irish cabinet system. Those ministers who have no seats in parliament are nominated, not by the president of the executive council, but by a committee of the chamber. The constitution states that so far as possible these ministers shall be "generally representative of the Irish Free State as a whole rather than of groups or parties."

Differences between the two groups of ministers.

The two classes of ministers differ not only in method of selection but in the directness of their responsibility to the chamber. Those ministers who are members of the parliament, including the president of the executive council (or prime minister), must retire from office whenever they fail to be supported by a majority. But those ministers who are not members of parliament stay in office during the term of the existing chamber, or during such other term as may be fixed by law, and may not be removed except on charges of malfeasance, incompetence, or disobedience. Such charges are heard by a committee of the chamber which must be so constituted as to represent all parties in that body. And the chamber cannot vote to remove the accused minister unless the pan-partisan committee finds the charges proved.

English and Swiss doctrines reconciled.

Here, then, is a compromise between the English and the Swiss doctrines of ministerial responsibility. In England all the ministers have seats in parliament, and the whole body of ministers must retire on an adverse vote of the House of Commons. In Switzerland the ministry (or federal council, as it is called) is made up entirely of men who have no seats in the Swiss assembly, and none of them resigns on an adverse vote of this body. When the vote is adverse the Swiss ministers stay in office and merely change their policy to conform to the assembly's desires.[1] Between these two extremes the framers of the Irish constitution steered a middle course. Some of the ministers are members of parliament, and some are not. Some must resign on an adverse vote; the others stay in office. Following the Swiss practice, however, all Irish ministers who are not members of the chamber have nevertheless the right to attend its sessions and to speak there, but not to vote. The chamber may at any time require them to attend and answer questions.

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[1] See *below*, chapter xxxv.

Functions of the executive council.

The functions of the executive council in Ireland are like those of the cabinet in England. It advises the president of the council, who, in turn, makes recommendations to the governor-general. It prepares the annual budget for consideration by the chamber. Each minister is the head of an executive department and is individually responsible for managing it.

It will be interesting to see how this plan stands the test of actual operation. The idea was to provide a scheme of administration in which ultimate parliamentary control could be reconciled with a reasonable degree of independence on the part of those ministers whose functions are largely of a routine character. Two groups of ministers are chosen in different ways, and hold office by different tenures, yet meet and act in one executive council. Obviously there is room for a good deal of friction in that arrangement.[1]

The Irish courts.

The judicial system of the Irish Free State, in accordance with the constitution, consists of lower courts, a high court, and a supreme court. All judges are appointed by the governor-general on the advice of the executive council. The Irish constitution makes no provision for the popular election of judges. Judges are appointed without limit of time and are not removable before the retiring-age except by resolution of both the chamber and senate, and then only on charges. Their salaries may not be diminished during their continuance in office. The supreme court has final jurisdiction in all cases save those in which an appeal may be taken to the judicial committee of the privy council in England.[2] The high court, with an appeal to the Irish supreme court, may declare any law of the Irish parliament to be unconstitutional.[3]

Political parties.

There are three political parties in Ireland. The Free State party, which is now in power, stands pledged to uphold the treaty of 1921 and the constitution of 1922. The Labor party has also accepted the treaty and the constitution. But the Republicans are unreconciled to both. They continue to demand the establishment of an Irish Republic, wholly independent of the British commonwealth of nations. Their strength in the

[1] A criticism of the plan may be found in Darrell Figgis, *The Irish Constitution* (Dublin, 1922), pp. 36-44.

[2] See *above*, p. 274.

[3] This provision was not taken from the United States. The same procedure exists in all the British dominions.

present chamber is not large, but it may increase considerably as time goes on.

The future. So whether the Irish question is settled remains to be seen. It appears to be settled unless the Republicans get control of the Irish parliament. In that eventuality it will assuredly become acute once more. The majority of the Irish people have accepted the Free State because it seemed to be the only practicable alternative to a continuance of warfare, disorder and demoralization. It appealed to them as an expedient, not as an ideal. It appealed to the heads, not to the hearts, of Irishmen. Under such conditions it would be folly for anyone to venture a prediction as to what the future may bring forth.

The boundary question. By the treaty of 1921 the six northern counties of Ireland were given the option of joining the Free State or of continuing their separate government under the Act of 1920. They chose the latter alternative. The treaty also provided for the readjustment of boundaries between the Irish Free State and Northern Ireland, this to be done by a commission in accordance with the wishes of the inhabitants so far as may be compatible with economic and geographic conditions. The delimitation of boundaries is now under way.

There are many political histories of Ireland. The most useful for the general student are P. W. Joyce, *Concise History of Ireland* (London, 1914); W. O'C. Morris, *Ireland 1494-1905* (Cambridge, England, 1909); and Mrs. John Richard Green (Alice Stopford Green) *Irish Nationality* (London, 1911). Attention should also be called to E. R. Turner's *Ireland and England* (New York, 1919) which contains a very good bibliography. On the home rule movement there is P. G. Cambray's *Irish Affairs and the Home Rule Question* (London, 1911) which is written from the Unionist point of view, and S. G. Hobson, *Irish Home Rule* (London, 1912) which is strongly Nationalist in tone. The Sinn Fein movement is enthusiastically described in P. S. O'Hegart's *Sinn Fein* (Dublin, 1918), and the Easter insurrection in John F. Boyle's *Irish Rebellion of 1916* (London, 1916). A much more impersonal volume is *The Revolution in Ireland, 1906-1923,* by Professor W. Alison Phillips (London, 1924). The most useful book on the Irish constitution is Darrell Figgis, *The Irish Constitution* (Dublin, 1922).

CHAPTER XVIII

THE GOVERNMENT OF INDIA

There never has been anything so extraordinary under the sun as the conquest and still more the government of India by the English; nothing which from all points of the globe so much attracts the eyes of mankind.—*Alexis de Tocqueville.*

The successful administration of the Indian Empire by the English has been one of the most notable and admirable achievements of the white race during the last two centuries.—*Theodore Roosevelt.*

India in the seventeenth century.

India is the vast and varied Italy of the Asiatic continent, a great peninsula fenced on the north by towering mountains, but protruding far southward into the tropical seas. To Europeans of the Middle Ages it was dimly known as a far-away land, renowned for the spices and other costly commodities which it supplied. When Englishmen, during the sixteenth century, began to take an interest in India, the whole peninsula was a mosaic of states, races, religions, and languages. The Great Mogul, at Delhi, was nominally overlord of them all; but his authority did not count for much save in a relatively small area. The extensive Mogul empire had become disintegrated into the Mahratta states, the Moslem kingdoms of Oudh and Bengal, the Rajput principalities, and the territory of the Sikhs. A score of kingdoms, principalities, and small native states covered the rest of the territory. India, in 1600, was like Europe at the same epoch, a strange medley of political areas, big and little, without a dominating central authority. This must be kept in mind if one is to understand the ease with which the English brought the country under their sway.

How England obtained her first foothold in India.

England's interest in India dates from the chartering of the East India Company, a body of commercial adventurers desiring to trade with the Far Orient. This company, in 1600, was given wide powers, including the right to acquire territory and to make regulations for the government of such acquisitions. Although its chief activities were commercial, the East India

Company soon found it desirable to secure, by treaty with the rajahs and other native potentates, various tracts of land immediately surrounding its trading posts or "factories," and these estates were gradually extended until the company became the owner of large territories in which it set up its own scheme of civil administration. The East Indian trade turned out to be highly profitable and in some years yielded a dividend of one hundred per cent, hence the company's operations were extended to many parts of the peninsula. Large stores of valuable merchandise were concentrated at various points and had to be protected. The native chiefs could not guarantee this protection, so the company inaugurated the policy of maintaining, at each of its posts, a small garrison of Englishmen, drilled and officered in military fashion. And with the rapid increase in the number of trading posts these garrisons eventually gave the company control of a sizeable army.

The conflict with the French.

In due course, however, rival exploiters of the trade came into the field, more particularly the French East India Company which was organized in 1664. This company also established trading posts and warehouses in India, sometimes not far from the English settlements. Similarly the French entered into negotiations with the native rulers and secured control over various small blocks of territory. Like the English, moreover, they stationed garrisons to protect their trading operations. But this policy of keeping bodies of European troops in India proved expensive and before long both companies adopted the plan of hiring natives whom they trained to serve in their garrisons. They found that these natives made good soldiers when drilled and commanded by European officers. In this respect the native races in India differed from those of North America. The brown man was amenable to military discipline, the red man was not. Although both the French and the English tried to drill the latter, they never met with any success. The North American Indian would not fight in European fashion. Given a musket, he fought as with bow and arrow, skulking behind trees and barricades. He would not march in column of squads or deploy into line when the enemy appeared. All of this the native of India was ready to do, and do it for a small pittance of pay.

How it developed.

So both the English and French East India companies had native armies on their payrolls, and these armies had to have something to do. Opportunities, of course, were right at hand. The native rajahs were intermittently at war with one another, and they naturally desired the assistance of the Europeans in their local broils. They made repeated overtures to the English and French companies for alliances and help, offering grants of more land, privileges, and all sorts of new concessions in return.

In this way the commercial rivalry between the two companies led them into intrigues, understandings, alliances, and finally into open warfare. If the English supported one claimant to a native throne, the French, by sheer force of self-interest, gravitated to the support of his rival. Thus it came to pass that English and French officers, with both European and native troops, were fighting each other although England and France were outwardly at peace. Had India been a nation, a united country, with a strong central government, this condition of affairs would never have been tolerated; but there was neither unity nor consciousness of nationalism. So the whole peninsula became a cockpit in which two European commercial companies fought their duel for supremacy. When the combat thickened these companies drew their respective governments in, and eventually the Anglo-French conflict of 1753-1761 became a war of almost world-wide dimensions. French and British armies battled in India, in Europe, and in America as well.

The outcome in 1763.

The issue, so far as concerned India, was decisively settled. England, holding control of the seas, was able to support and reinforce her troops, while the French were not able to do either. This was a handicap that the French could not overcome, and by the Treaty of Paris (1763) they were forced to withdraw from the peninsula, reserving only a single trading post at Pondicherry. The British East India Company, meanwhile, clinched its hold upon the country by reducing the more powerful native rulers to subjection. The Great Mogul at Delhi became its vassal. It deposed mighty potentates and installed rulers of its own choice. It acquired the right to collect the taxes and to administer justice throughout the whole area of Bengal. From dealing in spices and dyes, the company thus rose to be a dealer in revenues, territories, thrones, and destinies.

The Regulating Act (1776).

Up to this point the British government had assumed no direct share in the administration of the East Indian territory. It had merely given military aid to the company as part of its own war operations against France. But the powers and jurisdiction of the British East India Company were now so extensive that some governmental oversight seemed to be necessary. It is always unwise to leave the functions of trader and governor in the same hands without supervision. The operations of the British in India, during the years immediately following the expulsion of the French, illustrated how baleful such a mésalliance between commerce and government can be. The company turned the civil administration into an agency for the earning of dividends. Its officials levied indemnities and fines at discretion, piled up wealth for themselves, came back to England and bought seats in the House of Commons from the owners of pocket boroughs.[1] There, in the heat of partisan zeal, they often shocked the conscience of the country by showering accusations of extortion and brutality upon one another. By these and other tales of corruption the public conscience in England was aroused and in 1776 parliament passed a general statute known as the Regulating Act which provided that a governor-general, appointed by the crown, should be stationed at Calcutta with an appointive council to assist him. The governor and his councillors were to supervise the political administration of the territories within the company's jurisdiction, while the company's own board of directors was left in charge of commercial and financial matters. Warren Hastings became the first governor-general under the provisions of this Act.

Pitt's India Act (1784).

But the provisions of the Regulating Act were not found to be altogether satisfactory, for the respective powers of the two authorities were not clearly defined, and much friction between the company and the governor-general resulted. Eventually Hastings was recalled and impeached before the House of Lords; but he was not convicted. The historian Macaulay, in what is perhaps the finest essay ever written by an Englishman, has vividly described the proceedings. The root of the trouble lay in an unworkable statute. The dyarchy of royal and company government would not function. There was nothing to do but abandon it, which parliament did by the passage of Pitt's India Act in 1784. This statute established in London a board of control consisting of several privy councillors with a president who eventually became secretary of state for India. It provided that all the operations of the East India Company should be under the supervision of this board. Thus it established the complete supremacy of the crown in India. The office of governor-general was retained, but in order to avoid friction the appointment was now vested in the hands of the company. The company, in other words, was to govern India but must do its governing under the scrutiny of a board which was appointed by the crown and responsible to parliament.

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[1] Readers of Thackeray will recall his exaggerated description of the typical nabob "who purchased the estates of broken-down English gentlemen with rupees tortured out of bleeding rajahs, who smoked a hookah in public, and in private carried about a guilty conscience, diamonds of untold value, and a diseased liver: who had a vulgar wife with a retinue of black servants whom she maltreated."

How it functioned.

This system of administration turned out to be an improvement. It stood the strain of the Napoleonic wars during which the French attempted to regain a footing in India, and with some changes it was continued down to the middle of the nineteenth century, during which time large additions to the British territories in India were made.[1] The authority of the native rulers was gradually reduced, or even extinguished, in favor of British jurisdiction. India seemed to be prospering under the rule of "John Company." The civil administration was greatly improved and on the surface everything appeared to be going smoothly. But in the teeming lands of the Orient the superficial appearances are often deceptive, and there was more resentment brewing than the English officials realized. India was not content to be ruled by a joint stock corporation. The Sepoys, in particular, had not resigned themselves to British suzerainty, and their leaders awaited a fair opportunity to cast it off.

The mutiny of 1857.

So the Sepoy mutiny of 1857 came as a great surprise. It caught the company unawares. The English, as it now appeared, had built up a formidable engine of revolt without knowing it. For they had continued the policy of maintaining large bodies of Sepoy troops, armed and drilled in European fashion, with English officers in command. These Sepoy regiments formed a considerable portion of the armed forces in India. It is never safe to arm a people whom you desire to hold in subjection. Particularly it is unsafe to give them control of strategical positions and of ammunition as the English did in India prior to 1857.

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[1] The company's charter expired in 1833, but parliament renewed it for twenty years, and in 1853 it was again extended.

Its sudden and unexpected outburst.

It takes but a small spark to touch off an explosion when enough combustible vapor is at hand. The mutiny of 1857 was fired by an episode of almost ludicrous inconsequence. This is the story in brief: The Enfield cartridges used by the Sepoy troops in their target practice were supplied from England. To protect them from dampness on the voyage they were enclosed in paper greased with animal fat. Before putting the cartridge in his rifle, the Sepoy was supposed to bite off this cover. Now it happens that to the Hindu the cow is a sacred animal, and to the Mohammedan the pig is unclean. So, no matter what the soldier's religion, it was not difficult to convince him that the English were provoking a sacrilege. Agitators soon convinced the troops that the destruction of their ancient faith was the chief design of the whole procedure and the mutiny burst like a flash. At Meerut, on a given signal, whole regiments mutinied, shot their officers and ran amuck. At Delhi the restoration of the Mogul empire was proclaimed. The rising spread quickly from garrison to garrison, and many British civilians as well as officers were massacred. For a time it looked as though the day of European rule in India had come to an end. Fortunately for the English, however, the mutiny did not spread throughout the whole territory. India was too diversified to unite in a common cause and the rising was mainly confined to the northwest provinces. Fortunately, also, an English military expedition was on its way to engage in war with China. The British government promptly called off the Chinese war, sent a fast vessel to intercept the transports, and diverted them to India. After some anxious months, and with much hard fighting, the mutiny was suppressed.

Finding a scapegoat.

When the trouble was over, public opinion in England insisted on finding a scapegoat and parliament hastened to put the blame on the company. The existing scheme of government in India was assailed by all parties because it involved a delegation of political authority to a profit-making corporation. People forgot, for the moment, that the company had built up a great empire from the nucleus of a few trading posts, that it had been governing this territory for seventy years under royal supervision, and that there was a credit as well as a debit side to its ledger.

Public opinion was in no mood to accept explanations. It insisted that the whole system of British control in India be reconstructed. Parliament bowed to this clamor and decreed that the East India Company should surrender its vast and varied political powers.

The Act of 1858.

In 1858, therefore, by "An Act for the Better Government of India," the whole territory passed under the direct control of the crown.[1] India was henceforth to be governed by a viceroy appointed on the advice of the English cabinet. Provision was also made for continuing the secretary of state for India, with rank as a member of the ministry. The secretary of state was to be assisted by a council of fifteen members, of whom the majority were to be persons who had lived in India. This council for India was to hold its sessions in London. The Indian budget was to be voted by parliament. As for the East India Company, it was given a term of years in which to fit its commercial operations into the new political order. As a promoter of commerce it had been a huge success in its day, but the governmental responsibilities had become too big for any company to carry.

How the new plan worked.

India was governed under the Act of 1858 for a little over fifty years. The secretary for India served as a link between the crown and parliament on the one hand, between England and India on the other. His powers were limited, to some extent, by the necessity of acting in accord with the Council for India, of which he was the presiding officer. In India a viceroy, appointed for a five-year term by the crown on the advice of the prime minister, was the head of the administration. He represented the Emperor of India, that is, the British monarch as emperor. He was assisted by two councils, one executive and the other legislative. All the members of the executive council were Englishmen, but the legislative council contained some natives. The legislative council had authority to make laws for India, but all its actions were subject to the ultimate legislative power of the British government.[2]

Under this scheme of government India came down into the twentieth century. A native population of nearly three hundred millions allowed itself to be ruled by a few thousand Englishmen. The rest of the world marvelled at this and wondered why. There were two reasons—the complete lack of unity among the people of India and the relatively benevolent character of English rule. British administrators in India, during this period, "carried a laborious and often thankless task with an unselfish desire to rule for India's good and to adhere to a high standard of official rectitude."[1] The country, during these fifty years, gave the English no serious trouble. Nevertheless there gradually developed a strong feeling, especially among the educated classes, that India ought to have a larger measure of self-determination. No scheme of administration, however enlightened or benevolent, can ever be satisfactory if it be not founded upon the consent and coöperation of the governed. The world has seen that lesson exemplified over and over again. White men, at various stages in history, have undertaken to govern "backward" races of black, brown, and yellow men for their own good; but in no case have they ever been thanked for it. As between crude misgovernment by itself, and the most enlightened administration by outsiders, no race of men ever hesitates to choose the former.

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[1] Not until 1877, however, was Queen Victoria proclaimed Empress of India.

[2] Prior to 1919 the executive council contained six members; the legislative council had a membership of sixty-eight, of whom thirty-two were elective.

The home rule movement in India.

At any rate the desire for self-government became more articulate during the closing years of the nineteenth century. It found expression through the Indian National Congress, an unofficial body of delegates collected from all parts of the country and assuming to represent the general opinions of the people. India, like Ireland, was fostering a home rule movement. But it made little real progress until after the outbreak of the world war. India might have given England a world of trouble during this conflict but did not. The country remained quiet and loyal during the great emergency in spite of German predictions that it would flame into revolt. Not only that—India actually contributed a large expeditionary force to aid the allied cause. This action made a most favorable impression in England and engendered a feeling that India ought to be rewarded with as large a grant of self-government as could safely be bestowed. Accordingly, in 1917, the secretary of state for India was sent to Calcutta where he and the viceroy agreed upon a project which they embodied in the Montagu-Chelmsford report.[1] On the basis of this report the British government then prepared the draft of a comprehensive home rule measure which passed parliament in 1919 as the Government of India Act.[2]

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[1] Claude H. Van Tyne, *India in Ferment* (New York, 1923), p. 5.

The Government of India Act (1919).

This Act now forms the constitution of India. It entirely reconstructed the internal government of the country but it did not make much change in the channels of British control. The king remains Emperor of India, as under the old order; the secretary of state for India continues to be a member of the British ministry, and serves as the connecting link between the two governments.[3] The Council for India is somewhat reduced in size, and provision is made that it must contain three Indian members, but its advisory functions remain unaltered. In the British parliament a standing committee on Indian affairs has been established, and to this committee all proposals of legislation relating to India are first referred. India also maintains, at her own expense, a high commissioner in London.

The viceroy,

The viceroy, or governor-general of India, continues to be appointed by the crown, on the advice of the prime minister, for a five-year term.[4] He is assisted by an executive council or ministry appointed by himself. Of these councillors, three out of eight must be natives of India. All the members of this council must have seats in one or the other of the two legislative chambers. Hence the executive council functions to all intents as a ministry or cabinet. Official acts of the governor-general are performed in accordance with its advice although in certain contingencies he may act on his own responsibility. The Act of 1919 does not specify that the members of the council shall be responsible to the Indian parliament for the advice which they give the governor-general; on the contrary it is well understood that the council cannot be overthrown by an adverse vote of the legislature. The governor-general, indeed, may override the action of the legislature by "certifying" that any legal provision or item of expenditure is essential to the welfare of India. When he so certifies, his action acquires the force of law.

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[1] Mr. Montagu was secretary of state and Lord Chelmsford was viceroy. This *Report on Indian Constitutional Reforms* was issued as a public document (Cd. 9109) in 1918. A discussion of it may be found in E. M. Sait and D. P. Barrows, *British Politics in Transition* (1925), ch. viii.

[2] It received the royal assent on December 23, 1919. The first elections in India were held in November, 1920, and the new central government in India was inaugurated in the early months of 1921.

[3] Down to 1919 the salary of the secretary of state for India had been charged to the Indian budget. This salary is now paid by the British treasury, thereby removing a grievance of long standing.

[4] The crown also appoints the commander-in-chief, the judges of the high court, and various other high officials. Many of these higher positions and most of the lower ones are held by natives of India. Officials and employees of all grades in India number more than a million and a half, of whom fewer than 10,000 are Englishmen. The Indian civil service is recruited by competitive examination. Large numbers of educated Indians have entered the service in this way during recent years.

There is no full executive responsibility.

So the Act of 1919 did not establish responsible government in India. It did not put the viceroy of India on the same plane of responsibility as the governor-general of Canada or Australia. The framers of the Act had to face the probability of deadlocks between the executive and the legislative branches of the government at Delhi. How should such deadlocks be solved? They decided that the executive, in cases of emergency, should have the power to make its will prevail,—in other words that the British government should have the last word, for the governor-general acts on instructions from his superiors at home. Similarly the governor-general has the right, in emergencies, to issue ordinances which do not require the concurrence of the legislature. These ordinances hold for six months only, but they may be reissued. Finally, the assent of the legislature is not required in the case of army expenditures, which form a large part of the Indian budget.

These are the chief limitations which have been placed upon the central government. Other limitations, as will be seen presently, are imposed upon the provincial governments by the diarchic system which has been established there. All in all, they constitute reservations of large importance, but it is by no means certain that they will have to be called into use except on rare occasions. The Act of 1919 gives India self-government with a string tied to it. It was wise to take this precaution because home rule in tropical countries is an experiment which has yet to prove successful anywhere. But the limitations upon self-government are so framed that in most cases they do not come into play unless deadlocks or emergencies arise.

The parliament of India.

The Indian legislature or parliament meets at Delhi.[1] It consists of two chambers, a council of state and a legislative assembly. The former contains not more than sixty members, of whom not more than twenty are ex-officio members, that is, they sit in the council of state by reason of their holding certain administrative offices. The remaining members are elected. The legislative assembly has a membership of one hundred and forty, of whom one hundred are elective, while the remainder are either ex-officio or appointive members. The appointive members are named by the governor-general who is supposed to use his appointing power in such way as to give representation to whatever important interests have not obtained it at the elections. The Indian legislature is authorized, however, to increase the membership of either chamber and to vary the ratio of elective and non-elective members, so long as at least five-sevenths of the membership is kept elective.[1] Bills may be introduced in either chamber but can only be passed with the concurrence of both. If, however, the legislature fails to make provisions for essential expenditures, or to make necessary laws, the governor-general on the advice of his council may act on his own authority. The normal life of the council of state is fixed at five years, and that of the assembly at three years; but the governor-general may under certain circumstances, shorten or lengthen these terms.

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[1] Prior to 1919 the capital was at Calcutta. During the summer months the seat of government is moved to Simla.

The suffrage.

By whom are the elective members of the Indian parliament chosen? The suffrage is a rather complicated affair. Prior to 1919 the elective members of the old legislative council were chosen by a complicated scheme of indirect election. This has now been abolished, and the individual voter chooses his representative directly. But the qualifications for voting are not the same at all elections; on the contrary there are three different voters' lists, one for electing members of the council of state, another for the legislative assembly, and a third for the legislatures of the various provinces. Each list is based upon the ownership or occupancy of property, or the payment of taxes, or the prior tenure of certain designated offices. The differences are chiefly in the amount of property or taxes required to qualify, the amount being lowest in the case of the provincial lists. It is somewhat higher for elections to the legislative assembly, and highest of all in the case of lists used for the council of state.[2]

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[1] The governor-general is not a member of either chamber, but has the right to address both of them in person.

[2] To set forth the various requirements would take more space than can be afforded in this book, for not only do they differ in the three classes

The number of voters.

Under these arrangements more than five million persons are qualified to vote at provincial elections, about one million names are on the voters' lists for the legislative assembly, and fewer than eighteen thousand are enrolled for council of state elections. It will be seen, therefore, that the Act of 1919 did not establish manhood suffrage in India. Manhood suffrage would provide India with at least fifty million voters. On the other hand the placing of ballots in the hands of even five million people represents a long step toward the establishment of popular government. The proportion of voters to population is larger than it was in England a hundred years ago. Nor should it be forgotten that in the entire population of India there are fewer than two million people who can read and write. It may be taken for granted, of course, that the present suffrage will be gradually widened as time goes on.

Powers of the central government.

The Act of 1919 assigns to the government of India a wide range of powers, including provisions for defence, foreign affairs and relations with native states, railways and shipping, post offices and telegraphs, currency and coinage, customs and commerce, together with civil and criminal law. In addition, the central government has authority in all other matters which have not been expressly assigned to the provincial administrations. Provision is made, however, for the shifting of jurisdiction from one government to the others and vice versa. With the assent of the governor-general the central government may assume any function which the Act has conferred on the provincial authorities, and with the same sanction the latter may invade the field of jurisdiction which has been given to the central government. Thus the division of powers has not been made hard and fast.

The provincial governments.

Experience in self-government is best acquired in the lower ranges of a political system—in the provinces, districts, towns, and villages. Men must learn to be faithful over a few things before they can safely be made rulers over many. Hence it is unwise to begin by infusing a homeopathic dose of democracy into the national government; a better plan is to teach an untutored people the art of free government by giving them, first of all, a liberal measure of control over their own neighborhood

of elections but a distinction is also made between the requirements in urban and in rural constituencies. A table showing the various requirements may be found in E. A. Horne, *The Political System of British India* (London, 1922), p. 109.

affairs. This lesson of political experience was respected by the British parliament in framing the Act of 1919. It explains why this measure gives a larger modicum of home rule to the provinces than it gives to India as a whole.[1] There are fifteen of these governments in India of which nine are under governors and six under chief commissioners.[2]

The distribution of central and provincial powers.

The distribution of powers between the central and provincial governments gave the framers of the constitution much difficulty, but the problem was finally settled in an ingenuous way. A distinction is first made between *central* subjects and *provincial* subjects. Broadly speaking all matters of local scope are listed as provincial subjects and are to be dealt with by the provincial authorities.[3] But the classification does not stop here. Provincial subjects are further divided into *transferred* subjects and *reserved* subjects. With respect to the transferred subjects (which include education, sanitation, public health, agricultural and industrial development, roads, public buildings, and local government), neither the British government nor the central government of India has any right to interfere except in certain cases of emergency. All transferred subjects are otherwise within the jurisdiction of the provincial authorities. So far as these matters are concerned, therefore, the provinces of India are virtually endowed with home rule. But with reference to the reserved subjects, among which the most important are the administration of justice and the control of police, the provincial governments remain under direct supervision from Delhi. It is understood, however, that these reserved fields of jurisdiction will eventually be abolished if the provinces show themselves capable of complete self-government.

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[1] The Act of 1919 contained only the statutory framework of India's new constitution. It left a great mass of detail, including such matters as the definite allocation of duties among the various authorities, to be dealt with by Devolution Rules. These rules were to be made by the central government in India with the approval of the British authorities. They were so made and were then ratified by resolutions in the House of Commons and House of Lords. In this way they were given the force of law.

[2] These are the presidencies of Madras, Bombay, and Bengal; the United Provinces, the Punjaub, Behar and Orissa, the Central Provinces, Assam, and Burma. Under chief commissioners are the Northwest Frontier Province, British Baluchistan, Delhi, Ajmer-Merwara, Coorg, and the Andaman and Nicobar Islands.

[3] The most important central subjects are national defence, foreign relations, relations with the native states, railways, the coinage, customs and certain other sources of revenue, criminal law and procedure, and "all matters not specifically declared to be provincial subjects." The residuum of power rests, therefore, with the central government and not with the provinces—which is the reverse of the arrangement made by the constitution of the United States.

Transferred and reserved subjects; how dealt with in the provinces.

This distinction between transferred and reserved subjects permeates and complicates the structure of the provincial governments. The administration of each province is in the hands of a provincial governor, appointed by the viceroy. The governor is assisted by an executive council, usually of four members, appointed by himself. All reserved subjects are dealt with by him and his council alone. For their actions in this field, the governor and his executive councillors are responsible only to the viceroy, not to the provincial legislature. But the provincial governor is also assisted by ministers (usually two or three of them), who are responsible to the provincial legislature, and as respects all transferred subjects the governor must be guided by the advice of these ministers "unless he sees sufficient cause to dissent from their opinion." Much may be made of this proviso as a check on the supremacy of the provincial legislature, but if governors follow a long-established tradition of British colonial administration they will not disregard the advice of their responsible ministers unless there are the weightiest reasons for so doing. The provincial ministers in India have the same rank and status as members of the executive council; but ministers and executive councillors do not sit together as a cabinet.

The dyarchy.

This division of jurisdiction, with some of the governor's advisers responsible to the legislature and some not, with one group of advisers handling transferred subjects and another group managing reserved subjects—this curiously bifurcated form of government is known to political scientists as a *dyarchy*. The word was coined by the historian Mommsen to describe the dual government which existed in certain provinces of the early Roman empire, where the emperor required the concurrence of the Roman senate for some of his acts but not for others. As applied to the provinces of India this dyarchy is not intended to provide an ideal or permanent scheme of administration. It is a compromise between home rule in all matters, and home rule in none. It was seized upon as the best practicable way of dealing with an exceedingly difficult problem.[1]

The legislature of each province consists of a single chamber containing three classes of members—appointive, official, and elective. First, the governor is authorized to appoint a certain number of members, the number varying in the different provinces. Second, the members of the executive council (usually four) together with certain other high administrative officials, have ex-officio seats in the provincial legislature. But these two groups taken together must not constitute more than thirty per cent of the whole membership. The third element, constituting at least seventy per cent of the legislature, is made up of members elected by the voters who are enrolled on the provincial lists.

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[1] We speak of the Philippines as having a very large measure of home rule, but under the Jones Act, all subjects are virtually reserved subjects.

The provincial legislatures.

General and special constituencies.

Members are elected from both general constituencies and special constituencies, and this is also true of elections to the legislative assembly of India as a whole. By a *general* constituency is meant all the voters of a designated race, religion or vocation living in a certain area—for example, the Sikhs in the Punjab or the non-Brahmins in Madras. By a *special* constituency is meant all the voters of a certain economic or educational status—large landholders, owners of factories and other industries (through their chambers of commerce and other associations) and graduates of universities. Each university, for example, elects one member to the provincial legislature. There are no single-member geographical districts with a unified electorate as in England or America. It is as though the Jews, the Baptists, the Socialists, the tobacco-growers and the factory owners in every American state were each allowed one representative for fear that otherwise they would be left without any representation at all.

The reason for this arrangement.

This arrangement of constituencies, absurd as it may seem, is made necessary by the fact that in India the whole social structure rests upon caste and religion. The cleavages between the different castes and sects are so wide that no candidate who belongs to one of them would ever get votes from any other. The Mohammedan would not vote for a Hindu candidate no matter what his qualifications might be. There is no consciousness of a common citizenship which transcends all divisions of class and religion. In India it is not "my country first," but my race, my caste, or my religion first. This bottomless gulf of distinctions, based on historic differences, is something that few outsiders ever appreciate. Democracy must inevitably rest on toleration; without it no democratic government can ever function. But in India there is no toleration. That is why there has been a resort to constituencies of a personal, not a geographical character.

The Gandhi movement.

The Government of India Act was a compromise, and as such its provisions have not satisfied anybody. Many British residents in India feel that it gives too much self-government to a people who are not prepared for it. The leaders of the home rule movement, on the other hand, complain that it does not go far enough. They declare that it is merely black despotism painted white, that it gives the forms of self-government while withholding the substance. Accordingly, when the new government was put into operation they advised their followers to have nothing to do with it. They urged the voters to stay away from the polls, and large numbers followed their advice. When members of the legislature were elected they urged them to remain absent from the sessions. Under the leadership of Mahatma Gandhi this movement for non-coöperation spread widely and attained great strength. It involved passive resistance not only in politics but in every other field where British interests were concerned. The people were advised to buy no British-made goods, to accept no English money, to ignore their British suzerains in every way. This curious mixture of mysticism and materialism, it was believed, would be more effective than violence. But in due course the non-coöperators split into two factions, one of them urging active participation in the elections with a view to making trouble on the inside. This division has greatly weakened the political strength of the Gandhi movement.

At present there are three political factions in India. First are the Moderates who accept the present scheme of government as a first step and are willing to give it a fair trial. Second, there are the Nationalists who want complete self-government at the earliest possible moment and have no interest in the present plan except as a means of driving the British to further concessions. Finally, there are the Non-Coöperators, once wholly dominated by Gandhi but now broken into two factions, one of which would wreck the whole plan by destruction from within, while the other holds to the original program of complete non-coöperation. Among the latter is a considerable element of book-learned Hindus, an intelligentsia without worldly sophistication but with a boundless ambition to lead.

The native states.

What has been said in the foregoing pages has reference to about two-thirds of India. The rest is not governed under the Act of 1919 but consists of protectorates, or protected states. These states are under native rulers who carry on the government with the assistance of a British minister or resident, as he is called. If the native ruler conducts his government properly there is very little interference with him. On the other hand the British authorities have not hesitated to interfere, and even if need be to depose a native ruler, if he proves corrupt or incapable.

The future of Indian democracy.

How this new constitution of India will work out, in the course of time, is something quite beyond the power of any man to forecast. On the one hand Great Britain desires that India shall have democratic government in a steadily increasing measure, but this does not mean that democratic institutions of the Occidental pattern must be transplanted there, one after another. The institutions of a country ought to fit the genius of its people. Political democracy in the West rests on social democracy, and there is no social democracy in India. Can a true democracy be reared upon the caste system of modern India any more than it could be built upon the system of orders, privileged and unprivileged, in France before the Revolution? Can it be made to function, in Western fashion, among people who to one another are "untouchable"? India may acquire the forms of popular government, no doubt, but can the spirit of it be reconciled with the caste system? The whole problem is difficult by reason of its fundamentals.

For historical details the reader may be referred to Sir Alfred Lyall's *Rise and Expansion of British Dominion in India* (London, 1907), to Sir Valentine Chirol's *India, Old and New* (New York, 1921), or to Sir Verney Lovett's *India* (London, 1923) which contains a good bibliography. C. M. P. Cross, *The Development of Self-Government in India, 1858-1914* (Chicago, 1923) is an informing book on the period, and also contains a bibliography. The best book on the old governmental system is Sir Courtney Ilbert's *Government of India* (3rd edition, London, 1915). A supplementary volume, bearing the same title, was published in 1922, and another, entitled *The New Constitution of India,* by Sir Courtenay Ilbert and Lord Meston, in 1923. On the new political system there are several good books, notably B. G. Sapre, *The Growth of the Indian Constitution and Administration* (Sangli, India, 1924); and E. A. Horne, *The Political System of British India* (London, 1922). J. Ramsay MacDonald's book on *The Government of India* (New York, 1920) deals largely with conditions prior to the establishment of the new political system, but contains excellent chapters on such topics as the protected states, the Indian civil service, the administration of justice, and the rise of nationalism. On present-day politics and problems, mention may be made of Claude H. Van Tyne's *India in Ferment* (New York, 1923); Lajpat Raya's *Political Future of India* (New York, 1919); A. Carthill (*pseudonym*) *The Lost Dominion* (Edinburgh, 1924); and L. F. R. Williams' *India in 1922-1923* (Calcutta, 1923). A posthumous volume by Lord Curzon on *British Government in India,* is announced for publication in 1925.

CHAPTER XIX

BRITISH DOMINIONS AND COLONIES

The wishes, the desires, and the interests of the people of these countries must be the dominant factor in settling their future government.—*David Lloyd George.*

Area and population of the empire.

The British empire, or British commonwealth of nations as it is now called, comprises more than one-quarter of the land surface of the globe.[1] Its area exceeds twelve million square miles. Its total population is about four hundred and fifty millions, of which India contributes much the major portion. Now the entire population of the world is estimated to be considerably less than two billions, hence one person out of every four on the earth's surface is a British subject. In people of European birth or descent, however, the British empire makes no such impressive showing, for it contains less than sixty millions of them, which is only about half the population of the United States.

Its scattered character.

The British commonwealth of nations consists of territories in all six continents. In Europe there are the British Isles including Ireland and the Isle of Man, together with Gibraltar, Malta, and Cyprus. In North America there is the Dominion of Canada (with its nine provinces), together with Newfoundland, Jamaica, and various other islands in the West Indies. In Central and South America there are British Honduras, British Guiana and the Falkland Islands. In Australasia there are the Commonwealth of Australia (with its six states), the Dominion of New Zealand, the crown colony of New Guinea, and various South Pacific islands. In Africa the British territories include not only the Union of South Africa (with its four constituent states), but Rhodesia, Nigeria, Sierra Leone, Gambia, Uganda, Kenya, and Zanzibar together with various other colonies, protectorates, and mandated territories. The Sudan is under the joint control of Great Britain and Egypt, but since 1924 the former country has assumed virtually complete jurisdiction over this vast area. In Asia the Indian empire, including the protected states, is the most important member of the British commonwealth, but Ceylon, the Straits Settlements, the Malay States, Sarawak, North Borneo, and Hongkong are also included within the list of British territories. Palestine and Iraq (Mesopotamia) are likewise, for the moment at any rate, under British supervision.[1] Egypt, before the outbreak of the world war, was technically a part of the Turkish empire but virtually under British suzerainty. When the Turks cast in their lot with the Germans the British government declared a protectorate over Egypt and this status continued until 1922 when an Anglo-Egyptian agreement conceded to Egypt the rank of an independent state, subject to various reservations.

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[1] This excludes, of course, the Arctic and Antarctic regions.

Nature of its development.

The growth of Greater Britain is one of the epics of history. Nothing affords any parallel to it except the expansion of Rome in ancient times. It was not planned and premeditated; it was accomplished in a prolonged fit of absent mindedness. England expanded without a policy of expansion. A commercial and industrial nation by reason of geographical good fortune, England became a maritime and naval power. Her merchants traded to distant lands; her people made settlements there; her navy was able to protect them. It was not the British government that created the empire; it was the British people. The great exodus of Englishmen was not inspired or encouraged by the government. In English colonization the trader and the emigrant went first; the government came lumbering along in the rear. Somebody has said that the British empire was built up by the Irish in order that the English might govern it for the benefit of the Scotch. That remark is too bright to be literally true, yet it points to the fact that all three races have taken a hand in discovering, conquering, governing, and exploiting this vast dominion over palm and pine.

The two great periods of empire-building.

Historically the growth of the overseas empire falls into two general periods. The first extended from 1600 (when the British East India Company was organized) down to 1783, when the Treaty of Versailles recognized the independence of the United States. During this era of nearly two centuries Great Britain conquered Canada from France, secured for her traders a free hand in India, and founded thirteen colonies along the Atlantic seaboard. The loss of these colonies was a seemingly irretrievable disaster to the imperial cause, but it taught the British government some lessons that proved to be well worth the cost. These lessons were turned to useful account during the second period (from 1783 to the present day) in which an even more extensive range of territories has been acquired. The later acquisitions have been made in a variety of ways—by discovery and colonization (as in Australasia), by conquest (as in Africa), and by the peaceful expansion of territories in which a foothold had already been acquired (as in Canada and India). The British commonwealth of today is vaster in extent, more populous, and apparently more contented than the one which was rent asunder by the American Revolution.

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[1] See *below*, p. 368, *note*.

The American Revolution as a dividing point.

The American Revolution is the most conspicuous landmark in the history of Greater Britain. It closed one era and opened another. It taught the mother country a lesson, as has been said, but not the lesson that most Americans would have expected England to learn from the happenings of 1776-1783. There is no warrant for the hackneyed assertion that the American War of Independence impelled Britain to give her remaining colonies a full measure of political freedom. The colonies which did not revolt, but remained within the empire, obtained no substantial concessions in the way of self-government as an outcome of the Revolutionary War. Their political organization stood unaltered; their governors continued to be appointed from London and remained independent of colonial control. No British colony received a full measure of self-government for more than a half-century after the founding of the United States. The struggle for self-government had to be fought over again, as it was in Canada during the years 1835-1840.

What Britain learned from the Revolution

The lesson which Great Britain did learn from her experience with the thirteen American colonies was in relation to the control of trade. Therein the British authorities rightly interpreted the underlying causes of the Revolution. It was a series of economic grievances that led the American colonists to rebel. There were some political grievances, it is true, but these could probably have been adjusted without resort to hostilities. The American colonies did not take up arms because they wanted governors to be responsible to the legislature, or because they desired manhood suffrage. They did not endow themselves with these things after the Revolution. What they resented above all else was British interference with their trade and economic life. They had no patience with the doctrine that colonies existed for the benefit of the mother country. The British government, when the Revolution was over, appreciated the force of this grievance, and the remaining colonies were treated with a new liberality in matters of trade.

The new commercial policy.

It was in this sense that the American Revolution paved the way for the upbuilding of a new British empire. It sounded the death knell of the Navigation Acts. It gave a body blow to the whole mercantilist doctrine. As between economic self-determination and political self-government the former is by far the more vital to colonial prosperity, although both go logically together. And Great Britain has now given both to those of her dominions which seem capable of using their freedom worthily. Canada, Newfoundland, Australia, New Zealand, the Irish Free State, and South Africa are to all intents self-governing nations. They are democratic republics in everything but name. It is hard to classify the component parts of the British commonwealth of nations because it is a loose-jointed affair in which kingdom, empire free state, dominion, commonwealth, union, colony, protectorate, protected state, condominion and mandated territory are pieced together without symmetry, system, or apparent cohesion.[1]

The diversity of states and races.

The world has never seen another such miscegenation of dissimilar entities all held together by the bond of a common allegiance. These territorial units of government which make up the British commonwealth are racially as diverse as it is possible for a far-flung empire to be. They comprise some great areas with populations almost entirely of European birth or descent, such as Canada and Australia. In others, such as the Union of South Africa, the dominant races are of European ancestry, but there is also a large native element. And in the greater portion of the empire the native races far outnumber the Europeans. With this polyglot diversity in race, language, religion, law, and social traditions, it is not surprising to find that no two units in the British commonwealth are governed exactly alike. They range all the way from dominions with complete self-government to tropical colonies with no self-government at all.

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[1] This heterogeneity has seemed to many foreign students a source of weakness. When I was a student at the University of Berlin, a quarter of a century ago, I heard a lecture on the British colonial system by a distinguished German scholar. "The British empire," he said, "is held together by a rope of sand. If ever a great war should put pressure upon this jerry-built affair, it will collapse with a crash." How different, of course, from the German empire, with its symmetry and centralization raised to the highest pitch! Still, when the pressure came, it was the German empire that collapsed. The British empire was strengthened, not weakened, by the war.

How they may be classified.

In a broad way, however, all the territories under the British flag (apart from the United Kingdom, the Channel Islands, the Isle of Man, Ireland and India) may be arranged into six main groups. The first includes the self-governing dominions. There was a time when these dominions were officially known as colonies but this designation seemed to carry a flavor of subjection and it is not now used. The self-governing members of the British commonwealth (apart from the Irish Free State and Northern Ireland) are five in number, namely, Canada, Newfoundland, Australia, New Zealand, and South Africa. To these five, perhaps, we may now add a sixth—Southern Rhodesia. Second there are those territories which have a diarchic or semi-autonomous government, that is, self-government with some powers reserved. India, as has been shown, is the best example, but Malta is in the same category. Third there are territories without complete self-government in any field, their general administration being under the control from London. Some of these have colonial legislatures, the upper chamber of which is appointive and the lower chamber elective (Bermuda, the Bahamas, and the Barbados). Some have legislative councils of a single chamber in which there are both appointive and elective members. In some of the latter (Ceylon, Cyprus, and Jamaica) the elective members form a majority; in others (Hongkong, Nigeria, Trinidad, etc.) they do not. A few (including Gibraltar, Ashanti, and Basutoland) have no legislative councils at all. All the territories in this third group have sometimes been called crown colonies but that term is somewhat misleading, for there are some of them in which the crown does not have power to legislate by order-in-council.

Fourth come the protectorates and protected states, especially the protected states in India, which are ostensibly independent and whose government is carried on by native rulers under the general direction of a British official who is usually known as the minister resident. Fifth are the mandated territories which are governed in trust for the League of Nations, either directly by Great Britain as in the case of Palestine, or by one of the self-governing dominions, as in the case of Western Samoa where the mandate is held by New Zealand. Finally, there are some territories which do not come within any of the foregoing classes. The Egyptian Sudan is neither a dominion, a colony, a protectorate, nor a mandated territory. It is technically a condominion, an area governed by Great Britain and Egypt jointly. The New Hebrides are governed under a condominion with France. Mesopotamia is administered, something after the fashion of a protected state, under the terms of an alliance.

The difficulty of making an exact classification.

It will be seen, therefore, that the territories over which British jurisdiction extends, either in whole or in part, do not lend themselves to any simple classification. Great Britain has no "plan" of colonial administration. Every situation has been met, as it arose, by whatever action seemed to fit the case. The British government has never gone on the principle that one colony has the right to any concession because others have received it. Anomalies and inconsistencies have of themselves never caused much worry in Downing Street. Until a few years ago the little island of Ascension, off the west coast of Africa, was administered by the admiralty, which merely placed a naval officer in command and rated it as a battleship! There is not much point in attempting a detailed classification of all the red patches on the map of Greater Britain anyhow, for territories are constantly passing from one class into another.

The dominions.

Each of the self-governing dominions has a constitution, or, what is the equivalent of a constitution, in other words a comprehensive act of parliament on which its government is based.

Canada.

Canada is the most populous of these dominions. By the census of 1920 it had about eight million people, which is not much more than the population of Pennsylvania. About one-third of the people are of French descent, for the older sections of Canada were originally settled by colonists from France.

Early history.

These venturesome Gallic fishermen, traders, and missionaries not only established their settlements along the St. Lawrence and in what is now Nova Scotia, but penetrated into the valleys of the Mississippi and Ohio. Others went northward to Hudson Bay and overland to the far northwest. France ruled this territory with a stern hand, tolerating no vestige of self-government and permitting no democratic institutions to grow. When Canada had a population of about 50,000 the half century of conflict between France and England took place, ending in the capture of Quebec by the English. By the treaty of 1763 France agreed to withdraw from Canada and Great Britain took over the government of the colony. A considerable migration from England followed the conquest, and in time the new colonists outnumbered the old. Many of these new colonists moved into the territory which now forms the provinces of Ontario, Nova Scotia, and New Brunswick. In each case there was duly established a government consisting of a governor appointed by the crown, a council appointed by the governor, and an elective assembly. The assembly, however, had no means of controlling the governor or his council. What England established in Canada at the outset was a system of representative, but not responsible government. In other words it was similar to that which existed in the thirteen American colonies before the Revolution.

Lord Durham's mission.

Under this arrangement the governments of Upper Canada (now Ontario), Lower Canada (now Quebec), and the various territories now known as the Maritime provinces (Nova Scotia, New Brunswick, and Prince Edward Island) were carried on until about 1840. The system did not suit the masses of the people who felt that the entire government ought to be within their control, and as time went on the popular discontent began to assert itself openly. The home government made no move, however, and in 1837, both Upper and Lower Canada went simultaneously into rebellion. The uprisings were not formidable and both were quelled without great difficulty; but the British government had become alarmed and decided to explore the causes of colonial discontent. Accordingly it sent out to Canada, to serve as high commissioner, a young and gifted Whig nobleman, the Earl of Durham. He was instructed to assert the authority of the crown, to enquire into the colonial grievances, and to recommend such changes in the methods of government as he might think proper.

And his famous *Report.*

The Durham mission to Canada became noteworthy because it resulted in the preparation of an exhaustive and brilliant report in which the whole philosophy of colonial government was discussed. Durham did not prove himself a successful administrator, but his analysis of colonial grievances was masterful. He analyzed the source of the trouble with extraordinary astuteness. His report has become a classic among state papers, for it went into the whole question of what the relations of a mother country to her colonies ought to be. Even today, after the lapse of almost ninety years, it ranks as one of the best official reports ever written.[1]

The Confederation of 1867.

Durham recommended that Upper and Lower Canada be united into a single province and given a full measure of self-government. He urged that all branches of colonial administration be made responsible to the people. It was his expectation that if this was done a union of all the colonies in British North America might eventually be formed. His advice was followed and his expectations virtually realized. Within a few years the British government gave instructions that the governor of the two united provinces should conform to the principle of executive responsibility. Some time later a scheme of federation for all the provinces was prepared in Canada and this was presented to the British parliament. It was enacted by the latter in 1867 as the British North America Act and continues to serve as the constitution of the Dominion of Canada. This Act established a federal government of the parliamentary type, each of the five provinces being given a provincial government with assigned powers. Since 1867 the number of provinces has been increased to nine.

Its general nature.

The government of Canada bears a superficial resemblance to that of the United States in that there is a division of powers between the federal and the provincial governments. Matters of nation-wide importance are placed within the jurisdiction of the dominion authorities; while those of a local character are left to the provincial governments. The Act of 1867, like the Constitution of the United States, contains a definite enumeration of powers, but in one essential feature the two documents stand in contrast. In the United States all powers not definitely granted to the federal government remain with the states; in Canada all powers not definitely reserved to the provinces go to the central government. This provision was dictated by a feeling among the Canadian leaders of 1867 that the constitution of the United States had not made the national government strong enough, and that the Civil War might have been avoided if the individual states had not been left with so much authority.

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[1] John George Lambton, Earl of Durham, *Report on the State of Affairs in the Canadas* (London, 1839). A reprint of this report, without the valuable appendices, was published by Messrs. E. P. Dutton & Company, New York, in 1902.

The governor-general. The titular chief executive in Canada is a governor-general appointed by the crown for a five-year term. The appointment is made on the advice of the cabinet and has invariably gone to to some member of the British nobility. The governor-general performs substantially the same duties as those imposed upon the king of England. He summons and dissolves the dominion parliament, gives the assent of the crown to legislative measures and makes appointments to office,—all on the advice of his ministers. These ministers are responsible to the Canadian House of Commons. He serves as the channel of communication between the Canadian authorities and the colonial office in London. But Canada also maintains a high commissioner of her own in London and may use this official as a medium of communication as well. The office of governor-general, at any rate, is one that entails many functions of a ceremonial nature, but no official discretion, or almost none.

The cabinet. The Canadian political system closely follows the English model in providing for a responsible cabinet. This cabinet is chosen, as in England, by a prime minister whose responsibility to the House of Commons is exactly the same as at Westminster. So the real chief executive of the dominion is not the governor-general but the prime minister, who is invariably the leader of the majority party in the Canadian House of Commons. Each member of the cabinet must have a seat in the Canadian parliament and the whole cabinet must resign, as in England, whenever it loses the confidence of a majority in the House.

The Dominion Parliament. The parliament of Canada consists of two chambers, a Senate and a House of Commons. Not having a peerage (and having no desire to create one) it was impracticable to model a Canadian Senate on the British House of Lords. Nor was it thought advisable to follow the example of the United States to the extent of having senators chosen by the various provinces.[1] It was decided therefore, that the Canadian Senate should be composed of 96 members appointed for life by the governor-general on the advice of the prime minister.[1] This, as matters have turned out, was not an altogether happy decision, for the prime minister almost invariably recommends the appointment of senators from the ranks of his own political party. A Conservative prime minister, while he is in power, fills senatorial vacancies with Conservatives; a Liberal prime minister rarely recommends the appointment of any but Liberals. Like the Senate of the United States the Canadian upper chamber has concurrent legislative power with the lower house except as regards money measures. There is no provision in Canada, as in Great Britain, for solving a deadlock between the two chambers by having the Commons re-enact a measure three times. When the Canadian Senate rejects a bill which has passed the House of Commons there is no way of making the will of the latter prevail. In practice, however, important measures have not often been rejected. The Canadian Senate has virtually accepted the doctrine that under ordinary conditions the House of Commons ought to take the chief responsibility for lawmaking and that its own work should be confined to the revision and perfecting of bills sent up to it.[2] The Senate, therefore, plays no vital part in the government of the Dominion. It does not share in the control of the cabinet. Its influence in Canada is certainly no greater, and on the whole it is probably less than that of the House of Lords in Great Britain. A proposal to reorganize it is now under consideration.

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[1] It will be remembered that at the time the Canadian constitution was being formed (1867) the United States Senate was not regarded as a striking success. There was a widespread feeling that the equal representation of the states in the Senate had helped to make a peaceful settlement of the slavery issue impossible.

The House of Commons.

The Canadian House of Commons bears a close resemblance to the American House of Representatives. Its members are elected from parliamentary districts or constituencies—one from each. These constituencies are approximately equal in population and redistricting takes place (as in the United States) after every decennial census. The total membership of the House of Commons at the present time is 234.[1] The maximum term during which a House of Commons may sit is five years, but the House may be dissolved at any time by the governor-general on the advice of the prime minister. Such dissolutions, however, have been less frequent than in England.

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[1] In making appointments there must be a prescribed distribution among the nine provinces. Ontario and Quebec have 24 senators each; the other provinces have smaller quotas, roughly according to their respective populations. In all the provinces except Quebec they are appointed at large; in Quebec they are named from senatorial districts.

[2] The Canadian Senate, rather curiously, has acquired jurisdiction over the granting of divorces. Some of the provinces have no divorce courts, hence the only way in which their residents can obtain divorces is by a special act of the Dominion Parliament. Petitions for such acts are, as a matter of custom, always presented to the Senate; a Senate committee then hears the evidence and the whole chamber concurs in the committee's recommendation. A special act granting a divorce, when it passes the Senate, is never defeated in the House.

How its members are elected.

As respects the suffrage Canada has fallen into line with the United States. Any British subject twenty-one years of age or over, male or female, is entitled to vote after one year's residence in Canada provided he (or she) has resided in the constituency for two months. And any qualified voter may become a candidate for election. There are no primaries for the selection of candidates, as in the United States. Nominations are made, in each constituency, by party conventions. The voting is by secret ballot and the ballots bear no party designations.

Its powers.

In Canada, as in England, the House of Commons is the real pivot of legislative power. It controls the cabinet. All financial measures must originate in the House, and as a matter of practice most other measures originate there also. Bills are introduced, referred to committees, debated and voted upon, and then go to the Senate for concurrence. A distinction is made, as in the mother of parliaments, between government measures, private members' bills, and private bills. There is a speaker, but the English tradition of re-electing him to his office so long as he remains a member of the House is not followed in Canada. When a new government comes into power it elects a new speaker from its own ranks. The standing rule of the British House of Commons that no proposal to spend public money will be considered unless it is introduced in the name of the crown (that is, by a member of the cabinet) has been adopted in Canada and this gives the cabinet a large measure of control over the whole field of public finance.

Political parties in Canada.

Political parties exist in Canada as in all other countries having free government. In nomenclature the Canadian parties resemble those of Great Britain, but in their organization and methods they are much more nearly akin to those of the United States. The two older parties call themselves the Conservatives and the Liberals; a third party, known as the Progressives, has come into prominence since the war. This third party draws its chief strength from the farmers of the Canadian Northwest, supplemented by support from the wage-earners in some of the industrial centers of the East. As in England the names of the political parties give no real clue to their respective attitudes on matters of public policy. The differences between them, such as they are, do not relate to the fundamentals. The constitution of Canada ignored the existence of political parties and the laws for the most part continue to treat them as wholly outside the mechanics of government. But their influence on the course of public policy is as great as in England or the United States.

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[1] The Canadian constitution provides an ingenious safeguard against such repeated increases in the size of the House of Commons as have taken place in the American House of Representatives. The quota of members from the Province of Quebec is permanently fixed at 65; the other provinces are entitled to such quotas as their respective populations warrant according to the Quebec ratio. Nova Scotia, for example, with about one-quarter of the population of Quebec, has 16 members.

The provinces.

Canada is a federation of provinces, of which there are now nine in all.[1] Each of these nine provinces has its own provincial government consisting of a titular chief executive who is called lieutenant-governor, a provincial prime minister and cabinet, and a provincial legislature. The lieutenant-governor is appointed for a five-year term by the governor-general on the advice of the federal cabinet. The position of lieutenant-governor carries no personal authority inasmuch as all official acts are performed in accordance with the advice of the provincial cabinet which, in turn, is responsible to the legislature. The legislature, which consists in seven provinces of a single chamber, is elected by universal suffrage.[2] Party lines are substantially the same in provincial as in federal politics.

Australia.

In point of population, Australia comes next among the self-governing dominions. The island became a British possession by discovery and settlement early in the nineteenth century. It was at first deemed to be of little value and was used for a time as a penal colony. In time, however, colonies of free settlers and of liberated prisoners were established in different parts of Australia and these colonies were given a system of partial self-government which eventually widened into complete autonomy. There were six of these colonies and various attempts were made during the last half of the nineteenth century to unite them into a federation but the project did not succeed until 1900 when the Commonwealth of Australia was established by action of the British parliament at the request of the colonial governments. The constitution of the commonwealth was ratified by the people and it cannot now be changed except by the assent of a majority of the voters in a majority of the states.

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[1] Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Manitoba, Saskatchewan, Alberta, and British Columbia.

[2] In Quebec and in Nova Scotia there are two chambers—a legislative council and a legislative assembly, both elective.

General structure of its government.

In general the government of the Australian commonwealth somewhat resembles that of Canada although there are some important differences. A governor-general and a federal cabinet form the executive branch of the government. There is a parliament of two chambers called the Senate and the House of Representatives. But the Australian Senate, like that of the United States, is based upon the principle of state equality. It consists of thirty-six senators—six from each state irrespective of population. And the senators are elected, as in America, by statewide popular vote. The Australian House of Representatives also follows the American model in that it is comprised of members elected from districts which are approximately equal in population, one from each. Universal suffrage has been established throughout the commonwealth. Each of the six Australian states also has its own government, which, in a general way, is similar to that of a Canadian province. But in apportioning powers between the federal and provincial governments the Australian constitution reserves to the states all powers not definitely given to the central government.[1]

The Union of South Africa.

The Union of South Africa consists of four provinces (Cape Colony, Natal, the Transvaal and the Orange Free State) which were united in 1910. This union differs from the federations of Canada and Australia in that it does not rest upon an enumerated division of powers between federal and provincial authorities. The South African constitution gives virtually full and complete authority to the Union parliament. But it reserves some jurisdiction to the provinces and also provides that the Union Parliament may delegate to the four provincial governments such powers as it sees fit. In any event all laws enacted by the provincial governments must have the approval of the Union authorities before they become valid. The South African Union, therefore, is a federation in form only. It is the sort of federation that Alexander Hamilton would probably have established in America if he had been given his way in 1787.

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[1] The best concise description of Australian government is that given in Lord Bryce's *Modern Democracies* (2 vols., New York, 1921), Vol. II, pp. 166-264.

The South African government consists of a governor-general, a cabinet, and a bicameral legislature. The Senate is made up of forty members, eight chosen by the legislative council of each province and eight appointed by the governor-general on the advice of his cabinet—all for ten-year terms.[1] The lower chamber, or House of Assembly, is made up of members elected from single districts. Each of the four provinces is governed by an administrator who is appointed by the governor-general, and an elective legislative council.

The semi-autonomous territories.

It would take a whole volume to describe the government of those British territories which have a large amount of self-government but not a full measure of it. Southern Rhodesia, for example, enjoys virtually full autonomy except for certain restrictions placed upon its government in the interest of the native population. Malta has full self-government except as regards certain reserved matters such as defence, coinage, external trade, and immigration. In Jamaica the elective representatives of the people control the legislative branch of the government but do not control the executive. The status of Jamaica is thus, somewhat roughly, like that of the Philippines. British Honduras, another colony in the Western Hemisphere, has a legislative council in which the representatives of the people do not constitute a majority, and St. Helena (famed as the last home of Napoleon) has no such council at all. From Canada to St. Helena, therefore, the various territories run the whole gamut of colonial governments, with all degrees of self-determination and democratic control. But whatever the measure of colonial home rule, or the lack of it, British suzerainty has always aimed at the protection of the native races, the abolition of slavery, the maintenance of order, and the training of the people in the art of government.

Protectorates and protected states.

Britain has many protectorates and in such territories there is sometimes a great gulf between the theory and the facts of government. Ostensibly a protectorate is not subject to control as regards its own internal affairs but only as respects its foreign relations. But the fact is that internal affairs and foreign relations cannot always be sharply differentiated and the protecting country usually gives itself the benefit of any doubt in the matter. Its minister resident, or resident general, or whatever he may be called, acquires the habit of tendering advice to the native rulers on all manner of problems, both internal and external. He becomes, to all intents, the directing factor in the government of the protectorate. The status of a protectorate is not usually permanent; in time it ripens into annexation, or, as has sometimes happened, into independence.

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[1] It may be of interest to mention that four of the appointive senators have been named to represent the colored population.

Spheres of influence.

Protectorates should not be confounded with spheres of influence. A sphere of influence is a backward area in which the interest of some civilized state has become recognized as paramount. When two European countries find themselves engaged in rivalry for the exploitation of some undeveloped territory, and drifting towards open rupture because of this rivalry, they try to reach an agreement dividing the territory into spheres so that each of the exploiters may keep from interfering with the other. Prior to the world war, for example, Great Britain and Russia agreed to delimit spheres of influence in Persia. As respects countries which are not immediately concerned, these agreements have no binding force. They depend for their validity upon the power of the countries which acquire the spheres of influence. Nor do such agreements establish any rights of sovereignty, although the dominant country sometimes imposes a directing hand on the political affairs of the territory in question.

Mandated territories.

Mandated territories offer a new complication to the student of colonial government. At the close of the world war there arose the question as to what disposal should be made of the former German colonies and of certain territories belonging to the old Turkish empire. At the end of previous great wars such territories had usually been divided among the victors. In this instance, however, it was felt desirable to try some new plan more in keeping with the principle of self-determination. So it was agreed in the Treaty of Versailles that the territories wrested from Germany and Turkey should be handed over to the League of Nations on the understanding that each should be administered, on behalf of the League, by one of its member-countries. Mandates for the government of the various territories were thus awarded to the victorious countries, to Great Britain and France particularly. The United States was offered a mandate for Armenia but declined it. The mandatory, or country holding the mandate, is in the position of a trustee for the League of Nations, to which it reports periodically. The future of these mandated territories is obviously bound up, accordingly, with the fortunes of the League.[1]

The supremacy of parliament.

In principle the British parliament has supreme and unfettered power over all British territories, no matter what their status. It is not permanently bound by the provisions of constitutions which it has granted to Canada, Australia, and other dominions; it has an undoubted legal authority to repeal any of them at its discretion. As a matter of usage, however, no Act of Parliament is ever extended to any of the self-governing dominions against its wishes. Nor would the constitutions of the self-governing dominions be amended except at their own request.[2] So here we have, once more, an illustration of the wide divergence which exists between the law and the usages of British government. Parliament retains the fiction of complete supremacy, but in the case of the dominions has surrendered the substance of it.

The veto of laws.

In all the British dominions and colonies it is provided that the governor-general, or the governor, may withhold his assent to any measure until the pleasure of the crown can be made known. This means that he may exercise a temporary veto until the measure has been laid before the British cabinet. And even if the governor gives his assent, a dominion or colonial law may subsequently be disallowed by the London authorities. In some of the colonies this prerogative of withholding assent, or disallowing laws after they have received the assent of the colonial governor, has been freely exercised; but in the self-governing dominions it has now been virtually abandoned. A distinction should be made, of course, between the vetoing of colonial laws and the work of the judicial committee in invalidating them as unconstitutional.[1]

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[1] Palestine is held under a mandate granted by the League of Nations. This mandate imposes upon Great Britain the duty of making such political and administrative arrangements as will assure the establishment of a Jewish national home, the development of self-governing institutions, including local self-government, and the protection of all civil and religious liberties. Under this mandate Great Britain has appointed a high commissioner for Palestine. He is assisted by an appointive council. There is also a legislative council, in which a majority of the members are indirectly elected by the people.

Mesopotamia (Iraq) was also given to Britain under a League mandate, but the people of the former country made strenuous objection to this arrangement. Hence an alliance was concluded between the two governments. Under the terms of this agreement Great Britain is to render advice and assistance without impairing the independence of Mesopotamia. This agreement has been accepted by the League of Nations in lieu of the earlier provision.

[2] All the self-governing dominions, except Canada, have power to amend their own constitutions.

The colonial office.

The secretary of state for the colonies is the official medium of communication between the government of Great Britain and the governments of all British territories outside the United Kingdom, including the Irish Free State but not including India. Even the protectorates, which were at due time under the supervision of the foreign office, now come within the purview of the colonial secretary. The colonial office does its work through four sections, one of which deals with the self-governing dominions (including Southern Ireland), another with the administration of the crown colonies and protectorates, the third with matters which are common to all the colonies (such as currency and education), while the fourth section deals with the mandated territories in the Near East. The head of the colonial office changes when a new ministry comes in, but the subordinate officials are permanent. A change of ministry does not involve any appreciable change in colonial policy because its broad outline is accepted by the nation as a whole and is not, in the main, a matter of party controversy.

The representation of the dominions in London.

The self-governing dominions maintain in London officials who are known as high commissioners, and some of the provinces or states maintain agents-general there also. These officials, who are appointed and paid by their respective governments, have functions which are chiefly of a commercial character; but they are also utilized by their own governments in dealing with the colonial office. Their functions are steadily becoming more diplomatic in character. Some of the dominions also maintain agents in other countries. These agents virtually take the place of consuls, although they are not members of the British consular service. Canada, a few years ago, was given the right to appoint a minister in Washington and in this way to handle more expeditiously all questions arising between the Dominion and the United States. But thus far no minister has been appointed.

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[1] See *above*, pp. 274-276.

The Irish Free State, however, maintains its own representative at the American capital.

The matter of treaties.

This raises the question whether a treaty can be made between one of the self-governing dominions and a foreign state. Is a dominion self-governing to that extent? In general, the answer is No. The treaty-making power is ordinarily exercised through the British government. But on one occasion, a few years ago, the government of Canada negotiated a fisheries treaty with the United States and this treaty was signed by a Canadian representative, not by a plenopotentiary of Great Britain. Too much stress must not be laid upon this incident, however, for the treaty was made with the full consent of the British government. Furthermore the United States Senate, in ratifying the pact, made clear that its provisions applied to all British subjects, and not to Canadians alone. Thus the treaty, although signed by a Canadian (not a British) representative, was in effect an agreement between Great Britain and the United States.

English sentiment in relation to the empire.

During the early Victorian period, about the middle of the nineteenth century, there was a widespread feeling in Great Britain (especially among the Whigs and Liberals) that distant colonies like Canada, Australia, and South Africa were of dubious value to the mother country. They claimed the protection of the British army and navy; they drew the home government into their quarrels; they desired all the advantages but would give nothing in return. They were like "ripe fruit," as Turgot once said, that would fall from the parent tree whenever they had grown to maturity. It was taken for granted by many Englishmen that the bestowal of full self-government would be merely a prelude to complete independence. During the era of Disraeli's leadership, however, this pessimism began to disappear. Englishmen commenced to think in terms of imperialism. It was an idea that appealed strongly to the jingo-minded, this vision of the imperial standard flying over territories on every continent and afloat on every sea. In time the new ardor brought forth a school of imperialistic writers,—writers of history like Sir John Seeley, and writers of poetry like Rudyard Kipling. They wrote and sang about the romance of England's expansion, her dominion over palm and pine, her far-flung battle line, and her shouldering of the white man's burden. Public sentiment was tuned up to a new interest in the colonies and projects of imperial federation began to be much discussed.

The project of imperial federation.

In 1887, on the occasion of Queen Victoria's jubilee, representatives of all the dominions and colonies were summoned to London and in an atmosphere of festivity a series of conferences between these representatives and the home government were held. The project of an all-empire council or parliament was cautiously broached but nothing came of it. Ten years later, at the Diamond Jubilee of 1897 there was another conference, and more discussions; likewise with no tangible results. Far-called, the navies melted away; the captains and the kings departed; the colonial prime ministers sailed for home; and the dream of an imperial federation remained a dream. It was suggested, however, that such conferences should be called from time to time to discuss problems of imperial interest. This suggestion was adopted and the imperial conference has now become an established institution. It ordinarily meets every four years, but may be specially summoned at any time. It has a permanent secretariat, attached to the colonial office. At these conferences the prime minister of Great Britain presides. The other members are the secretary of state for the colonies, the secretary of state for India, the president (prime minister) and one or more ministers from the Irish Free States, the prime minister and one or more other ministers from Canada, Australia, South Africa, Newfoundland and New Zealand, together with certain representatives from India—making more than twenty members in all. The imperial conference has no constitutional powers; its function is merely to deliberate upon matters affecting Great Britain as a whole and to secure informal agreements as to common action. But its importance has grown steadily and it may now be looked upon as an important factor in imperial administration.

The imperial conferences.

The imperial war cab'net.

A further step was taken during the world war. At the inception of this conflict, it will be remembered, all the British self-governing dominions hastened to offer assistance and contribute their quotas of troops to the allied cause. Canada, before the war was over, was maintaining an entire army corps on the Western front. Australia, New Zealand and South Africa also contributed large forces. It was deemed advisable, therefore, that the dominions should be given some share in the direction of

British war policy and in 1916 the war cabinet summoned the various prime ministers (together with two native representatives from India) to join in its discussion of war problems. The sessions of the war cabinet, as thus enlarged, were known as sessions of the *imperial* war cabinet. Sessions continued during 1918 and until after the armistice when the members betook themselves to Paris to represent their various governments at the peace conference. Meanwhile it was suggested that after peace had become firmly established, some permanent arrangement ought to be devised whereby the self-governing dominions and India would be given the right of "continuous consultation in all important matters of common imperial concern." Everyone concurred in this principle, but thus far no steps have been taken to carry it into effect.

The British dominions and the League of Nations.

At the peace conference of 1919 Canada, Australia, New Zealand and South Africa were represented by their own delegations.[1] The covenant of the League of Nations, moreover, provided that the self-governing dominions should be admitted as regular members of the League, with the right to maintain separate representatives in the League's assembly. This arrangement, which gave Greater Britain six votes in the assembly of the League (since the admission of the Irish Free State in 1923 it is seven votes) was strongly criticised in the United States, but the various dominions insisted upon it as a mark of their self-governing status and they have been represented in the League assembly since its establishment.

Some British colonial problems of today:

It has commonly been assumed that the interests of Great Britain and her dominions are substantially alike and that on most questions the British commonwealth of nations, with seven votes in the League assembly, would act as a unit. But there is not much warrant for this assumption. The discussions at the various imperial conferences have disclosed many points of disagreements between Great Britain and the dominions on matters of imperial policy. First there is the question of foreign affairs. When Great Britain goes to war it is almost impossible for the dominions to stay out. They think it only fair, accord-

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[1] It will be noted, however, that they were not invited by the United States to send separate delegations to the Washington Conference in 1921, although Canada, Australia and New Zealand were directly interested in the Pacific problems which came before this conference. The British delegation was assisted by advisers from these dominions.

1. Colonial participation in British diplomacy.

ingly, that the British government should consult with them before taking any step which might lead the empire into hostilities. The government at Westminster accedes to this in principle; but how can any such arrangement be made practicable? The dominions are scattered all over the face of the globe, and their governments are not likely to be of a single mind on any international issue. Yet moves on the diplomatic chessboard must sometimes be made quickly. Great Britain, for example, had only about forty-eight hours in which to reach her decision on the eve of the world war. To stipulate that she will consult all the dominions, and be guided by them, would be to make England impotent in world diplomacy. So the matter has been left as a hostage to opportunitism. Britain consults her dominions when the exigencies permit, but may act without doing so when need arises.

2. Imperial defence.

Then there is the question of imperial defence. It has long been the hope of the British government that the dominions would contribute in some way to the cost of maintaining the British navy. And fairness would seem to dictate that they make some contribution, for Britain has relieved them from the necessity of maintaining fleets of their own. Australia, New Zealand, and South Africa have at different times and by different methods made contributions to the maintenance of the British naval power, while Canada on one occasion made a half-hearted attempt to maintain a small fleet of her own, purchasing two armed vessels from the mother country and agreeing to maintain them. But Canada has never been ready to give a substantial contribution in money. It has been found impracticable, therefore, to arrange any uniform and permanent basis upon which all the dominions would be willing to contribute their share towards the cost of imperial defence. The maintenance of the navy falls almost wholly on the taxpayers of Great Britain.

3. An imperial tariff preference.

The possibility of establishing preferential tariffs throughout the empire has also had much discussion during the past thirty years. Each British dominion makes its own tariff and these tariffs lay duties on imports from Great Britain as from other countries. Canada, however, gives British imports a preferential rate, the reduction from the regular customs duties amounting to about one-third. Australia, New Zealand and South Africa also have varying differentials in favor of imports from Great Britain.

These dominions, of course, are desirous that the rule should work both ways, in other words that Great Britain should give imports from the dominions a tariff preference also. But Great Britain has no regular tariff and her people rejected in 1923 the proposal to establish one.[1] The result of this election was a disappointment to the dominions, but thus far they have continued the British preference in their own tariffs. Whether this one-sided arrangement will permanently continue is hard to say.

Greater Rome and Greater Britain.

Students of colonial government have been fond of comparing the Roman empire with Greater Britain, for there are some resemblances between the two, and some contrasts. The British empire is vastly more extensive and the bonds which hold its component parts together are wholly different. Rome dominated her provinces by fear and force. When Roman military power waned the empire of the Cæsars went to pieces. The British commonwealth of nations does not rest on military force. It is held together by considerations of allegiance and sentiment, by ideals and mutual advantage. From India, the dominions, and the colonies, Great Britain derives (not tribute, as Rome did) but economic advantages, more particularly a great market for her manufactures, cargoes for her ships, opportunities for her people, a place in the sun for her emigrants. Trade follows the flag. Emigration, to some extent, does likewise. The dominions, on the other hand, derive some important political benefits. Each is saved the expense of maintaining an army, a navy, a diplomatic service, a consular service. Nevertheless they are virtually in full and free control of their own affairs. What have they to gain by cutting adrift?

The future.

This extraordinarily loose framework of the British commonwealth is held together by two outstanding bonds,—common allegiance and common ideals. Every square mile of territory, whether it be dominion, free state, or colony, is under the suzerainty of the British crown. Its officials take an oath of allegiance to the king. The monarchy, as has been said, is the visible symbol of unity throughout this vast commonwealth. The community of political ideals is also a tie that binds, although it does not manifest itself in any symbolic form. Everywhere there is a consciousness of these common ideals and a conviction that they can only be preserved by holding together. It is an adventure full of fascination, this attempt to reconcile democracy and self-government with the need for common action in matters affecting the whole. What the outcome will eventually be there is no way of predicting. History affords us no clue to prophecy, for the world has never seen another aggregation like the British commonwealth of today.

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[1] On a few products there is a limited preference, established by the Finance Act of 1919.

The most useful general survey of British colonial expansion is that given in H. E. Egerton's *Short History of British Colonial Policy* (New York, 1898). Mention should also be made of Sir John Seeley's *Expansion of England* (London, 1895). A. Berriedale Keith's *Responsible Government in the Dominions* (3 vols., Oxford, 1912) gives a full presentation of the subject, and *The Oxford Survey of the British Empire*, by A. J. Herbertson and O. J. Howard (Oxford, 1914) contains much serviceable information. There is now being issued a series of twelve volumes under the general title *The British Empire*. These contain a great mass of data. Particular attention should be called to volume II in this series which presents a survey of colonial constitutions and government by A. B. Keith. This book contains an excellent bibliography. On the government of Canada the best volume is W. P. M. Kennedy's *Constitution of Canada* (Toronto, 1922). Lord Bryce's *Modern Democracies* (2 vols., New York, 1921) describes the governments of Canada, Australia, and New Zealand. Imperial questions of today are discussed by Lionel Curtis in *The Problem of the Commonwealth* (London, 1916).

CHAPTER XX

A SURVEY OF FRENCH CONSTITUTIONAL HISTORY

> It is the experience of the ages that every man who attains power is prone to abuse it. He goes forward until he finds his limits. If power is not to be abused then it is necessary, in the nature of things, that power be made a check to power.—*Montesquieu.*

French history and French government.

To understand the government of any country it is not enough to study the bones which make up the skeleton of its institutions. A government is not an affair of bones alone, but of flesh and blood, muscles and nerves, mind and soul. So the student of government must not be an anatomist only, but a physiologist and a psychologist as well. He must remember that government is an organism which owes something to heredity and something to environment. To understand the genius of a government, therefore, he must not only know its present structure but its history, its temperament, and the atmosphere in which it functions. There has been too much study of government as a motionless thing, a valley of fossils, of stereotyped institutions. Every government is a going concern, a living organism which carries something from the past into the present, and something from the present into the future. Howsoever men may disagree about biological evolution, there is no question that all political institutions have evolved and are evolving.

A republic with a past.

France is a republic, a relatively young republic, fifty-five years of age. But the present political institutions of republican France, many of them, are much older than this. They are derived, in whole or in part, from the various despotisms, empires, monarchies and republics that have had their day in France during the past five hundred years. It is often said that France is a country with the forms of a republic, the institutions of a monarchy, and the spirit of an empire. The French Republic, in other words, is a republic with a past. Its visage is well indented by hangovers from the hectic days of Bourbons and Bonapartes.

France began her modern history with the revolution.

Ask an Englishman when the Middle Ages came to an end and he will give you the year 1500 as an approximate date. He calls Cromwell a modern statesman, Shakspere a modern dramatist, and Milton a modern poet. He is right—so far as his own country is concerned. England entered the modern era about the time that America was discovered. But if you ask a Frenchman he will tell you that the Middle Ages did not come to an end until 1789, inasmuch as feudalism, despotism, and the other institutions of mediævalism were not ousted from France until that date. To him the Revolution of 1789 is the most epoch-marking event in the history of the world. "It came like the law on Sinai," wrote Sainte Beuve, "amid thunder and lightning . . . and the foreigner loved it as much as we did." So, when the Frenchman speaks of modern France he means post-revolutionary France. Colbert and Cromwell were contemporaries, but no Frenchman looks upon Colbert as a modern statesman, or upon Molière as a modern dramatist for that matter, although both were born after Shakspere died. Modern France is very modern.

Characteristics of the old regime: 1. No Liberty.

It is not surprising that this should be so, for the Great Revolution shook France as nothing else has ever done. English history contains nothing like it. There have been revolutions in England, but never a revolution like this. France, prior to 1789, was a despotism. All political authority centered in an absolute monarch. There was no constitution, no parliament, no ministry responsible to the people. Once upon a time France had possessed the makings of a parliament, an assembly of three "estates"—one representing the clergy, another the nobility, and the third the common people. But the Estates-General met only when the king chose to issue his summons, and as time went on the intervals between meetings became steadily greater. During the long period intervening between 1614 and 1789 no meetings were called at all. So the Estates-General, unlike the English parliament, never developed into a check upon the royal prerogative. The king made the laws and the ordinances; he also enforced them, and punished violations on his own authority. The classic boast imputed to Louis XIV—*"L'état c'est moi"*—embodied no mere fiction of royal power. The king and the state were one. He was legislature, executive, and judiciary combined; the people had no share in their national government.

Nor did the people of France, in pre-revolutionary days, control their own local government. They had no elective councils in province or town or parish. Everywhere the officials of the king were in evidence—intendants, subdelegates, procureurs-du-roi, grand voyers, bailiffs, and tax-gatherers. In the king's name they ruled city and country alike, responsible to no one but the monarch himself. They owed their offices to appointment and not to election. Securities for the rights of individuals were altogether lacking. There was no freedom of worship, or of speech, or of petition. There was no writ of habeas corpus, no system of trial by jury. There were none of the modern safeguards for the freedom of the common man. By a *lettre de cachet* anyone might be arrested, thrown into jail, and kept in jail, without specific accusation, for any length of time. In a word there was no liberty.

2. No Equality.

Nor was this all. The country was honeycombed with special privileges of every sort. The clergy paid no taxes although the church possessed enormous wealth. It was said to own one-seventh of all the land in France. The nobility paid only nominal sums in taxation. The entire burden fell upon the bourgeois and peasant classes. This burden was very heavy, for the royal government spent money in prodigious sums. To make things worse the privilege of collecting the taxes was farmed out to profiteers who bid high sums for it and then had to recoup themselves by mercilessly squeezing the people. The higher positions in the government service, as well as in the army and the navy, were reserved for members of the noblesse. Many public offices, including judgeships, were literally sold at auction and when purchased became hereditary. This meant that only the rich could aspire to positions of honor or emolument in the service of the state. In a word, there was no equality.

3. No Fraternity.

Finally, the nation possessed no national solidarity. The kingdom had been built up out of provinces, and the old provincial sentiment remained strong. People continued to think of themselves as Burgundians, or Normans, or Bretons rather than as Frenchmen. There was no system of common law, common throughout the land, as in England. Each province, each part of a province, had its own *coutume* or body of customary law, and no two of these *coutumes* were alike. As between town and rural district there was little intercourse and no fraternal feeling. The townsman despised the peasant; the peasant hated him in return. Trade between town and country was throttled by the *octroi* or municipal tariff which levied duties at the town gates on all merchandise passing from one place to another. Goods going from Havre to Paris paid duties at ten points on the way. Even within the towns the old gilds or close corporations of artisans continued to control industry and to foster all sorts of class animosity. Thus the various parts of the country and the various elements among the masses of the people were kept at arm's length from each other. In a word there was no fraternity.

The Revolution of 1789.

Liberty, Equality, Fraternity became the watchwords of the surging tide which overwhelmed the old régime in 1789. The Revolution began in Paris. On July 14, 1789, the mobs stormed the grim structure known as the Bastile and turned the prisoners loose. Their insurrection spread with the same rapidity that we have seen in Russia during our own day. Within a few weeks the old order had been levelled to the ground everywhere. A revolutionary government was thereupon set up and a constituent assembly proceeded to clear away the debris. The king and queen were sent to the guillotine; the institution of nobility was abolished, the Church was disestablished and its lands confiscated; all special privileges and immunities were declared at an end; the Gregorian calendar was displaced by a new "revolutionary" system of months and years; the towns were given complete home rule; the country was deluged with paper money (*assignats*), and the guillotine was kept working night and day.

The various revolutionary constitutions, 1789-1795.

Meanwhile, as the ground was being cleared, the work of rebuilding began. The revolution produced a series of constitutions. The first was a Declaration of the Rights of Man and of the Citizen, promulgated by the Assembly in 1789. It was supplemented by various decrees which endeavored to carry the principles of the declaration into effect. Then, in 1791, came a more elaborate constitution providing for a responsible ministry and a single legislative chamber chosen for two years from men of property by indirect election. Although the Declaration of 1789 had asserted that "men are born with equal rights and remain so," the suffrage was now limited to those who paid a certain sum in taxes. But this constitution did not go far enough for radicals like Robespierre and Danton who wanted a real democracy of the proletariat. So it was replaced in 1793 by a new and much more striking document which formally set up the First French Republic with a single chamber and an executive committee. This constitution was submitted to the people and ratified by them, but it was never put into effect. Robespierre became the virtual dictator of France and inaugurated the Red Terror, but he soon fell from power and the moderates gained control. Thereupon a new constitution was drafted, submitted to the people, and ratified by them in 1795.

The Directory, 1795-1799, and the Consulate, 1799-1804.

This constitution of the Year III (1795) provided for a legislature of two chambers, chosen by voters with property qualifications. It established a plural executive or directory of five members, chosen by the legislature. Strong men were placed upon this directory and the country began to recover from its revolutionary chaos. The events of 1795 marked the turn of the tide. The new government continued to function for four years, but it never had a fair chance because France was hard pressed by foreign enemies during the whole of this period. In 1799 the directory was replaced by a consulate with Citizen Bonaparte installed as First Consul. The young Corsican had risen rapidly through a series of military victories and by a coup d'état took the reins of power into his own hand. Bonaparte was not an enthusiast for democratic government. He did not believe in popular constitutions. It was his idea that a constitution ought to be brief, general, obscure in its provisions, and easy to change. Hence, in 1800, the constitution of the directory was supplanted by a new one in which the powers of the legislative body were reduced to a shadow and those of the executive greatly increased. The Man of Destiny was now master of France. In 1802 he had himself proclaimed first consul for life and two years later (after submitting the question to a vote of the people), he became emperor. Thus, within the space of fifteen years, France had run the whole cycle of monarchy, republic, and empire.

The First Empire, 1804-1815.

Both as consul and as emperor Napoleon found it necessary to do a lot of reorganizing. At every step he centralized power in his own hands until he had more of it than the old Bourbon kings possessed. He placed his own prefects at the head of the territorial *departements* into which France had been divided by the revolutionary government, and these prefects became the tentacles of the imperial octopus. The whole system of local government was welded into a perfect pyramid. By his Concordat with Papacy, Napoleon restored the Church to something like its old status. He could not give back its lands, for these had been divided, and had passed into the hands of many small owners; but the emperor agreed to support the Church out of the public funds. "How can you have order in a state," he said, "without religion?" Believing also in social distinctions he revived the institution of nobility and founded the Legion of Honor. But the most striking among Napoleon's non-military achievements was the compilation of a series of law codes and the systematization of legal procedure throughout the country. These codes have remained in operation, without much change, to the present day.

Napoleon as a statesman.

Many other things were accomplished, by way of reconstruction, during the Napoleonic era. Unhappily the dramatic character of Bonaparte's military operations have served to dull the world's appreciation of him as a statesman. He was a man of marvellous political imagination and great organizing power. Courage and force were his immortalizing qualities. He was never afraid of a thing because it was new, neither was he disdainful of anything because it was old. France owes more to Napoleon the statesman than to Napoleon the warrior. The results of his statesmanship are still redounding to the benefit of his people while the fruits of his military victories have long since been lost.

The Napoleonic legend still survives, moreover, and is an invisible factor in the politics of France. From time to time, when the country gets into the doldrums, the people are roused and thrilled by recollection of the days when the Corsican eagle flew across the Mediterranean to Egypt and over the snows to Moscow. We forget that these dramatic crusades achieved nothing. They merely salted the deserts and steppes with the bones of Frenchmen. But legends pay little heed to profit and loss.

The Bourbon Restoration, 1815-1830.

The First Empire came to an end in 1814-1815 by reason of its military collapse. Napoleon was exiled to St. Helena and the old Bourbon dynasty was restored to power in France. The new king, a younger brother of Louis XVI who was guillotined during the Revolution, professed himself ready to be the head of a constitutional monarchy patterned after that of England. So an elaborate written constitution was prepared and put into operation. This charter attempted to reproduce the unwritten constitution of Great Britain; hence it contained provision for a House of Peers, an elective House of Commons, and a ministry. It was assumed that the ministers, as in England, would hold themselves responsible to the elective chamber. There was to be trial by jury, freedom of the press, writs of habeas corpus, and all the traditional English securities for personal liberty. But Frenchmen soon discovered that it is far easier to transplant the forms than the essence of a government. British institutions would not take root in foreign soil, even though the new environment was only thirty miles away. It has often been said of the Bourbons that they could "learn nothing, and forget nothing." At any rate Louis XVIII never caught the spirit of the constitution which he swore to uphold. Neither did his brother, Charles X, who succeeded him in 1824. The new king tried to maintain in office a ministry which did not have the confidence of the elective chamber, and thereby brought about a parliamentary deadlock. To break this deadlock he tried to set aside the provisions of the constitution, and by so doing precipitated the "July Revolution" of 1830. This resulted in the king's abdication and France once more faced the problem of providing herself with a new government. The time was not ripe for a restoration of the republic, and anyhow most Frenchmen believed that the monarch, not the monarchy, had been at fault.

The Orleans Monarchy, 1830-1848.

So they kept the monarchy and merely changed the line of kings. Louis Philippe, of the House of Orleans, was put on the throne with the understanding that he would be a strictly constitutional ruler. But the parliamentary bickerings continued and no ministry was able to stay in power for any length of time. Owing to the multiplicity of political parties in France the English system of ministerial responsibility would not function. It seemed impossible to respect the principle of ministerial responsibility and yet maintain a stable government. Frenchmen grew tired of a government conducted by bourgeois politicians who spent their time in ceaseless squabbles. The old glories seemed to have departed; the country was sinking to the status of a second-rate power. *"La France s'ennuyait,"* as Lamartine said, and the sentiment in favor of a republic grew apace. Had

France been England her parliament would have solved the whole problem by a Great Reform Act, but neither Louis Philippe nor his parliamentary advisers could take a large view of the situation. They let matters drift from bad to worse until, in 1848, Paris once more flamed into revolution. The king quickly relinquished his throne and the Second Republic was inaugurated.

The Second Republic, 1848-1852.

The constitution of the Second Republic, framed by a convention in American fashion, provided for a scheme of government that was simplicity itself. France was now to have a president elected for a four-year term by manhood suffrage. The ministers were to be named by the president. And there was to be an elective parliament of a single chamber. No more would France try to pattern her political institutions after those of England. The example of the United States seemed better worth following in a general way. A simple constitution and direct democracy would provide a panacea for the nation's troubles. A strong president would regain for France a place of leadership among the powers of Europe.

The problem of finding a president.

But whom should the people choose to be first president of the Second Republic? That constituted a difficult problem because there was no outstanding popular idol in sight. France in 1848 had some statesmen who were old and discredited, and some who were young and unknown; but there was no one who seemed to be the right man for the new position. So here was a Bonapartist opportunity, and a Bonaparte took advantage of it. Louis Napoleon, a nephew of the great Corsican, had been living in England, an exile. As head of the family and heir to the Bonapartist tradition he quickly seized the occasion, crossed to France, and got himself elected a member of the assembly. Then he announced his candidacy for the presidential office. He had no visible qualifications for the post except the heritage of a great name. But the whole country rallied to him in a few weeks and he was elected by an overwhelming majority.

The *coup d'état* of 1851.

As might have been expected, the election of a Bonaparte to the presidency was a prelude to the end of the new republic. Louis Napoleon had un-republican ambitions. His mind was obsessed with the Napoleonic legend and his heart was set on becoming emperor. Although elected president for only four years, and constitutionally ineligible for re-election, he had no intention of ever quitting his post of power. Accordingly, as his term drew to a close, he decided upon a characteristically Bonapartist stroke. Having secured the support of the army he moved large bodies of troops to Paris and arrested all the political leaders who were known to be opposed to him. Then, on the morning of December 2, 1851, the people of the city awoke to find the billboards placarded with proclamations announcing that the president's term had been extended to ten years. There was a slight show of popular opposition, but it was unorganized and speedily repressed. Less than a year later the president submitted to the people of France the question whether he should become emperor. This *plebiscite* was so adroitly manipulated and skilfully controlled that the people gave an affirmative vote and in November, 1852, the Second Republic was quietly transformed into the Second Empire with Napoleon III at its head.[1]

The Second Empire, 1852-1870.

Under Napoleon III some important changes were made in the plan of government. The double-chamber system was revived, with a Senate made up of high officials and of senators appointed for life by the emperor. The lower house, or assembly, although ostensibly chosen on a manhood suffrage basis, never proved to be a mirror of public opinion. The elections were controlled in a way which ensured the choice of the "official" candidates. The emperor had his ministers, appointed by himself, but they were not responsible to either branch of parliament. Authority in government became as fully centralized under Napoleon III as it had been in the days of his uncle. Napoleon III had none of his uncle's brilliancy either as a statesman or soldier, but he was nobody's fool and he managed to stay on the revived imperial throne for eighteen years.[2]

Its early popularity and later decadence.

The Second Empire lasted from 1852 to 1870. It covered an era of unexampled business prosperity in France, and this prosperity proved to be (as prosperity always does) a great solvent of political discontent. During the first eight or ten years of its existence the emperor was popular with the Church, with the army, and indeed with the masses of the people. But after 1860 his star began to wane. The country chafed restlessly under the autocracy of the government. Napoleon III attempted to divert attention from domestic affairs by plunging the country into various diplomatic and military ventures—the Crimean War, the Franco-Italian-Austrian War of 1859, the expedition to Mexico, and a gesture on the Rhine in 1866. These manœuvers succeeded for a time, but the incessant stimulus brought its inevitable reaction. Popular restlessness became so disturbing that various concessions to the principle of ministerial responsibility had ultimately to be made, particularly on the eve of the war with Prussia in 1870. This war, which Napoleon III entered so confidently, brought his own rule to an end.[1] For the emperor, with a large portion of his army, was cornered by the Germans at Sedan and forced to surrender.

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[1] The title "Napoleon II" was thus posthumously reserved for the young King of Rome, the only son of Napoleon I.

[2] Mr. H. G. Wells, in his *Outline of History* (Vol. II, p. 438), makes the rather startling assertion that Napoleon III was "a much more supple and intelligent man" than Napoleon I.

The collapse of 1870.

When the news of this surrender reached Paris, the capital blew up with indignation. The Empress Eugénie, who had been serving as regent while her husband was at the front, fled to England. A committee of national defence took control of affairs and the Third Republic was proclaimed. Napoleon III was subsequently released by his German captors and went to England where he died in 1875. His only son, the Prince Imperial, was killed while fighting with the British against the South African Zulus in 1882. The ex-empress, still an exile in England, lived through the world war and saw the wrongs done to France in 1870-1871 set right. She died in 1921.

Provisional government of the Third Republic.

When the Second Empire collapsed on September 4, 1870, the republican leaders set up a provisional government. The immediate problem was to solidify resistance to the Germans and to save Paris from capture. As it turned out, however, the military disasters were too great to be retrieved by any eleventh-hour effort. The Germans advanced to Paris, surrounded the city, and forced it to capitulate in the early days of 1871. The surrender was followed by an armistice during which the French people elected a national assembly empowered to pass upon the terms of peace. This body, chosen by manhood suffrage, convened at Bordeaux in February, 1871. Its members were elected for no definite term and without limit of powers.

The first task of the national assembly was to make peace

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[1] The causes of the Franco-German war of 1870 are too complicated for narration here. They are set forth in all the general European histories of the period.

Work of the national assembly.

with the Germans and get them out of France. This unpleasant mission was entrusted to Adolphe Thiers, whom the assembly appointed chief executive of France with the proviso that this authority might be revoked at any time. Thiers became, in effect, temporary President of the Republic, while retaining his seat as a member of the assembly. Under his direction the terms of peace were arranged and ratified. The Germans took Alsace-Lorraine and imposed a war indemnity of five billion gold francs to be paid by the French government within five years. Portions of France were to remain occupied by German troops until the last installment had been paid. No moratorium was asked for by the French, and there were no attempts at evasion. The whole indemnity was raised and paid in gold, or the equivalent of gold, within thirty-six months from the signing of the treaty.

Its factional quarrels.

Meanwhile the assembly turned its attention to the problem of framing a new constitution, and here some serious difficulties were encountered. With a membership of more than 700 it was far too cumbrous a body for work of this character. A majority of its members, moreover, were monarchists or imperialists at heart, and did not desire a republic as a permanent institution. These anti-republicans were in sufficient numbers to have adopted any sort of monarchical or imperial constitution if they had only been able to agree among themselves. But they were divided—some wanted a Bourbon monarchy, some an Orleans monarchy, and some a restoration of the Bonapartes. This disunion enabled the republicans to keep control of the assembly, and in the late summer of 1871 it passed the Rivet Law, so-called, by which Thiers was named President of the Republic with the provision that both he and his ministers should be responsible to the assembly for all their official acts. This was avowedly a makeshift arrangement, but it virtually committed the Third Republic to the principle of executive responsibility after the English fashion. Thiers, although occupying the presidential post, continued to be a member of the assembly. He frequently mounted the tribune and advocated his own views, thereby creating a rather anomalous situation—a titular chief executive trying to be prime minister and floor leader as well.

The deadlock of 1871-1875.

For nearly two years France drifted along, without a constitution and without any decision as to her ultimate form of government. In 1873 the draft of a republican constitution was prepared and laid before the assembly but it was defeated by the monarchists who were able to compose their quarrels for the moment. On the other hand they were helpless when it came to finding an alternative. They could agree to destroy but not to construct. Thiers, as a member of the assembly, became involved in these squabbles and urged his own views so earnestly that the assembly, in 1873, restricted his right of addressing it. Thereupon he became irritated with the temper of the legislative body and resigned the presidency. In his place the assembly chose Marshal MacMahon for a seven-year term. MacMahon was a soldier who had risen to the highest rank in the army under Napoleon III and his election was deemed to be an anti-republican victory.

The constitution of 1875.

Then various plans for a monarchical or imperialist restoration were discussed, but the assembly could not agree upon any of them although on one occasion it came very close to doing so.[1] On the other hand there was little chance that a republican constitution could secure the support of a majority. In this dilemma the assembly appointed a committee to prepare individual resolutions (*projets*), in the hope that various individual questions relating to the form of government might be settled one by one. This proved to be a way out of the difficulty and in 1875 the assembly was able to adopt, one by one, a series of three "constitutional laws." Then, having made provision whereby these laws might be easily amended, or added to, it went out of existence. These three constitutional laws were all that the Third Republic obtained from this long-lived assembly. They still form the constitution of France,—if three unarticulated laws can properly be called a constitution.[2]

Its nature.

The French constitution of 1875 differs from that of any other nation. It is unlike the constitution of Great Britain because it was drawn and put into force within a single year by an authorized group of men. It is unlike the constitution of the United States in that it comprises not one document but three. It is also unlike the American constitution in that it covers only a part of the governmental structure, not the whole of it. It is a piecemeal, half-hearted, unfinished affair. These constitutional laws of 1875 bear visible evidence of the spirit in which they were drafted. Their provisions are poorly arranged and crudely worded. They are silent on many matters of the highest importance, for example, the rights of the citizens, the organization of the courts, the selection of the ministers, and even the method of constituting the Chamber of Deputies. Taken as a whole they fall short of forming a constitution as most people understand the term.

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[1] In the summer of 1873 a majority was in sight for a plan by which France should again become a limited monarchy with a Bourbon (the Comte de Chambord) on the throne, and an Orleanist (the Comte de Paris) to have the right of succession. Everything was settled except the flag. The Legitimists (Bourbons) held out for the old fleur-de-lis, while the Orleanists insisted upon retaining the tricolor. On this flag question the whole plan foundered.

[2] The Law of February 24, 1875, deals with the Senate; the Law of February 25 relates to the President, the Chamber of Deputies, and the ministry; and the Law of July 16, 1875, explains the relations of the public authorities. The text of these laws may be found in any collection of modern constitutions, for example, in H. L. McBain and Lindsay Rogers, *New Constitutions of Europe* (New York, 1922).

How it differs from previous French constitutions.

Now it is not that Frenchmen were novices in the art of making constitutions. At drafting and adopting constitutions they had, in 1875, more experience than any other European people. Between 1789 and 1875 France had no fewer than seven constitutions, each of which was believed by its framers to be a monument of constructive statesmanship and worthy of a long life. The constitution of 1793, for example, was deemed by its framers to be a paragon of excellence. It never went into operation. The Charte of 1814 was extolled as a perfect copy of a perfect model. It died of anæmia when it was only sixteen years old. The constitution of 1848 was regarded by the founders of the Second Republic as the acme of simplicity and effectiveness. It perished while still in its swaddling clothes. The constitution of 1875 differed from all its predecessors in that nobody was proud of it, nobody was willing to be its godfather, nobody thought it would live, nobody regarded it as anything but a makeshift. Its framers, for the first time in the entire history of constitution-making, felt under obligation to apologize for the shabbiness of their work.

The sequel —1875-1925.

But they builded better than they knew. Their jerry-built trilogy has lasted for a longer time than any of the comprehensive and refined constitutions of earlier days—imperial, monarchical, or republican. It has rounded out a full half-century and is today possessed of greater strength than it has ever had.

What is the reason for this? It is mainly to be found in the simple fact that the constitution of 1875, unlike all previous

French constitutions, did not embody any system of political philosophy, did not sacrifice expediency to principles, did not attempt to make the frame of government hard and fast. It left many important things to be determined by statute, ordinance, custom, precedent, and growth. It did not wipe the old slate clean and begin anew; on the contrary it retained all the governmental institutions which existed prior to 1875, except insofar as they happened to be irreconcilable with the new order. Nothing was needlessly abolished. There was no violent break with the past. There was no borrowing of institutions from abroad. The constitutional laws of 1875 are Gallic in every line. They fitted the needs of their day; they have proved easy to change and to expand. Hence it has come to pass that the Third Republic, born on the morrow of a great disaster, and speeded on its way by men who did not wish it to live, has grown stronger with the lapse of time. During the past ten years it has shown itself able to bear the heaviest strain that could be put upon any government.

Reasons for the longevity of the present constitution.

How amendments are made.

France, in 1875, was tired of changing governments by coups d'état and revolutions. The framers of the constitutional laws were anxious to provide a non-violent way of reaching this end whenever it should become desirable. So they made the process of amendment simple,—about as simple as it could be made without entirely abolishing the distinction between "constitutional" and "ordinary" laws. The French constitution may be amended at any time by action of the two legislative chambers, the Senate and the Chamber of Deputies. In other words constitutional amendments and ordinary laws are made by the same legislators, but not in the same way. Each chamber, when a proposal to amend the constitution is put forward, decides whether it will go into joint session with the other chamber to decide upon the proposal. If both chambers agree to a joint session the senators and deputies repair to the great hall of the palace at Versailles where they meet as a national assembly. Each senator and each deputy has one equal vote, and a bare majority in joint session is decisive. Either chamber, of course, may decline to join with the other in convoking a session of the national assembly, and in this way each chamber has a veto on any constitutional amendment that may be desired by the other. Hence, as a practical matter, all amendments to the constitutional laws require a majority in each of the two chambers sitting separately, as well as in the two chambers sitting together.

The process is easy but few amendments have been made.

The constitution of France, it will be observed, is far more easy to amend than is the constitution of the United States. The distinction between *constitutional* and *ordinary* laws is still maintained by the French, but it is not of great practical importance. It takes a majority in both chambers to pass any law. The same majority is sufficient to change any provision in the constitution. In 1884 the national assembly adopted a constitutional provision stipulating that the republican form of government must never be made the subject of an amendment, but this stipulation would be no legal barrier if a future national assembly should decide to do what it forbids. There is no way in which a sovereign body can limit its successors. The process of amendment is easy, but this does not mean that it has been freely used. The flexibility of the constitution obviates the need for frequent changes. It is almost always so when a constitution is couched in general terms.

The amendments of 1879 and 1884.

Since 1875, in fact, the constitutional laws have been amended on two occasions only. The first was in 1879 when an amendment substituted Paris for Versailles as the seat of government. Five years later one of the constitutional laws—the one relating to the organization of the Senate—was completely revised.[1] More specifically it was provided that the law relating to the organization of the Senate should no longer have the status of a constitutional law but should be an "organic" law, which might be changed like any ordinary statute.

Constitutional, organic, and ordinary laws compared.

This raises the question: What is an organic law? Wherein does it differ from an ordinary law? There is not much difference other than a sentimental one. An organic law is one which, although open to repeal or amendment by exactly the same process as an ordinary law, is nevertheless regarded as more fundamental than a simple statute. It deals with the framework or mechanism of government. It is, therefore, of more than ordinary importance and has a sort of halo around it. It is not to be changed lightly or without good reason. We have a few statutes in America which roughly correspond to the organic laws of France; the statute of 1886 which establishes the existing rules of succession to the presidency (in case of the death or disability of both President and Vice President) is a good example. Such laws, in France, regulate the method of electing senators and deputies.

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[1] Other changes were made at this same time. One provided that no member of the Bourbon, Orleanist, or Bonaparte family should be eligible for election to the presidency. Another provided that when the chamber of deputies is dissolved a new election must be held within two months.

Supremacy of the national assembly.

Legal sovereignty in France resides with the national assembly, that is, with the two chambers in joint session. When the assembly is convoked there are no limitations upon what it may do. The Senate, being the smaller of the two chambers, and hence liable to be outvoted in a joint session, has always been reluctant to join in a convocation of the assembly until definitely assured as to just what amendments are to be considered. Yet if the national assembly should decide to go beyond the specific amendments that it was convoked to consider, there is nothing to prevent its doing so. For the assembly is the judge of its own powers and no court can declare its actions unconstitutional. Its decisions do not require the approval of the President, nor are they submitted to the people for ratification. Nevertheless, the people are politically sovereign in France, as in all other countries which have systems of representative and responsible government, for although it is the senators and deputies who make the constitution it is the people who make the senators and deputies.

France, during the nineteenth century, served as the world's chief laboratory for political experimentation. The people tried one form of government after another, one constitution after another—only to find themselves disillusioned. The world looked on and learned. The Anglo-Saxon shook his head and averred that Frenchmen had no political stability, that they were too fickle in their political allegiance to give any form of government a fair chance. Englishmen, fifty or sixty years ago, liked to tell of a tourist who went into a Paris bookshop and asked for a copy of the French Constitution. The bookseller glowered at him above his spectacles and said, "Young man, we don't sell periodical literature here. Go to a news stand!"

There would be no point in that witticism today. For fifty years France has lived under one constitution, one form of government. Her people have shown no fickleness to the republican cause. The republic, to all appearances, is here to stay.

A good brief account of the period 1789-1871 is given in G. L. Dickinson's *Revolution and Reaction in Modern France* (London, 1892). On the interval since 1871 reference may be made to Gabriel Hanotaux's *Contemporary France* (4 vols., New York, 1903-1909); Émile Bourgeois' *Modern France* (2 vols., 1919), and C. H. C. Wright's *History of the Third French Republic* (Boston, 1916). The various constitutions may be found in F. M. Anderson's *Constitutions and Other Select Documents Illustrative of the History of France* (2d edition, New York, 1908), and in Duguit and Monier's *Les constitutions et les principales lois politiques de la France depuis 1789* (3rd edition, Paris, 1915). Details relating to the framing of the constitutional laws may be found in A. Bertrand's *Origines de la troisième république* (Paris, 1911), and in Paul Deschanel's *Gambetta* (Paris, 1919).

CHAPTER XXI

THE PRESIDENT OF THE REPUBLIC

> The old kings of France reigned and governed. The constitutional king . . . reigns but does not govern. The President of the United States governs, but does not reign. It has been reserved for the President of the French Republic neither to reign nor to govern.—*Sir Henry Maine.*

The chief of state.

The presidency of the French Republic has been the butt of many epigrams both at home and abroad. Clemenceau, a physician of note in his younger days, once declared that there were two things for which he could never find any *raison d'étre,* to wit, "the prostate gland and the presidency." And the Abbé Lantaigne, more savage in his characterizations, once dismissed the presidency from his writings as "an office with the sole virtue of impotence." Its incumbent, he said, must neither act nor think; if he does either he stands to lose his throne. Yet in spite of all this badinage the fact remains that the President of the Republic is the supreme representative of the executive power in France. He is the chief of state and holds the highest political honor that a great nation can bestow. He sits in the seat of Bourbons and Bonapartes. He is the titular commander-in-chief of the armed forces on land, at sea, and in the air. He is the first citizen of the republic. Say, if you will, that the office does not carry powers commensurate with its dignity, but it is none the less an office which eminent statesmen have sought and are seeking.

Chosen by the national assembly

The President of the Republic is elected by an absolute majority of the two chambers, sitting together as a national assembly. The idea of having the president elected by popular vote, as is substantially the practice in the United States, did not find favor with the men who framed the French constitutional laws of 1875. They retained too vivid a recollection of what had happened in 1848, when the French people were stampeded into electing a president whose chief ambition was to scuttle the republican form of government. It is to be remembered, more-

why?

over, that the assembly which adopted these constitutional laws had already elected two presidents, Thiers and MacMahon. The presidential term is seven years, and there is no legal barrier to re-election.[1] Nor is there any popular sentiment against electing a president to succeed himself. But a re-election has taken place on one occasion only, although on two other occasions a president would possibly have been named for a second term had it not been for his own disinclination to continue in office. Thus the tradition against long tenure seems to be ripening in France, as in America, by the aid of voluntary declination.[2]

The place of election.

The procedure by which the national assembly chooses the president is laid down in the constitutional law of 1875. Briefly it is as follows: At least one month before the expiration of his term the president must summon the two chambers. If, for any reason he should fail to do this, the two chambers meet of their own accord, fifteen days before the expiration of the term.[3] The joint session is held at Versailles in a wing of the great château erected by Louis XIV. This hall of the assembly was reconstructed in 1875 and the Chamber of Deputies used it for regular sessions until 1879 when the legislative capital was moved to Paris. Since this removal the hall has been out of use except for the infrequent sessions of the national assembly—infrequent because it meets for two purposes only, to amend the constitution and to elect a president.

The caucuses which precede the formal choice.

The election takes place without nominations, speeches, or discussion. This does not mean, however, that there is no manœuvering, bargaining, lobbying, and bloc-making in advance of the meeting. There is a great deal of it. Caucuses of the various party groups are held and alliances are made among them. As will be indicated later, there are many political factions in France, but no one of them is of itself strong enough to command a majority in the national assembly. So they combine into blocs and by dickerings among themselves try to agree upon their respective candidates. Usually, but not always, the race gets narrowed down to two outstanding candidates, each supported by his bloc of party groups, and the assembly merely makes its choice between these two. There is no popular campaign such as takes place in the United States, no primaries or nominating conventions, and no appeal by candidates to the rank and file of the voters. Were any candidate to make his appeal to the people the national assembly would resent his doing so, just as the Congress of the United States is prone to become ill-tempered when outsiders try to force its hands. The voters have no share in the election of the chief executive except in as far as they may, by the influence of public opinion, bring pressure to bear on the action of their senators and deputies.

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[1] This presidential term of seven years has also been adopted by the German Reich, Czecho-Slovakia, and Poland.

[2] The list of the presidents, with their terms of office, is as follows: Thiers, 1871-1873; MacMahon, 1873-1879; Grévy, 1879-1886, second term, 1886-1887; Carnot, 1887-1894; Casimir-Périer, 1894-1895; Faure, 1895-1899; Loubet, 1899-1906; Fallières, 1906-1913; Poincaré, 1913-1920; Deschanel, 1920; Millerand, 1920-1924; Doumergue, 1924- .

[3] In case the presidency should become vacant by the death or resignation of the incumbent before the expiry of his seven-year term (as happened on six occasions) the two chambers convene immediately without any formal summons and proceed into joint session as a national assembly.

Logical candidates and dark horses in France.

The election, as a rule, is a foregone conclusion before the balloting begins. The numerical strength of each group in the national assembly can be figured with approximate accuracy and their alliances are usually an open secret. During the days which precede the election there is a lively scurrying among the leaders both big and little, with conferences and confabulations galore, the sort of thing that goes on during the first few days of a national party convention in the United States. Out of this series of manœuverings some candidate usually emerges with enough backing to ensure him a majority when the assembly meets. He may be a candidate who was looked upon as a logical one from the start (the presiding officers of the two chambers are usually regarded as logical candidates), or he may be someone to whom the various groups have been forced to turn in a spirit of compromise. Dark horses go to the Elysée as well as to the White House.

Effect of the system on the caliber of the candidates.

This system of election does not ordinarily lend itself to the selection of strong, aggressive personalities. The successful candidate must be someone upon whom enough senators and deputies of varying preferences can agree—and it is not the habit of compromisers to pick strong men. Clemenceau once said that he favored a candidate because of his "complete insignificance," or, to put it in familiar American phraseology, because he would let himself be dominated "by the best minds of his own party." Vigorous leaders, with minds of their own, do not make good candidates under a system of election by party blocs, for they have usually created too many antagonisms. Nor, if elected, are such men likely to make good presidents—as the history of the Third Republic has shown on at least two noteworthy occasions.

The election procedure.

At any rate the actual election, under ordinary conditions, is merely a dignified ceremony. The senators and deputies, on the day appointed, troop out from Paris to Versailles. The national assembly convenes in its great hall, and is called to order by the president of the Senate.[1] An urn is then placed on the tribune (a platform from which speakers address the assembly when it meets to discuss constitutional amendments), and the names of all the senators and deputies are called by a herald. Inasmuch as there are nearly nine hundred senators and deputies in all, this solemn calling of the roll consumes a good deal of time. As each member's name is reached he walks to the tribune and formally deposits in the urn a slip of paper bearing the name of his choice for the presidency. Any French citizen is eligible to be chosen unless he has been deprived of his political rights by the judgment of a court, or unless he is a member of a family that has reigned in France during the royalist or imperial epochs. This last-named exclusion was added to the constitution by one of the amendments of 1884. It was dictated, of course, by the fear that some Legitimist, or Orleanist, or Bonaparte might manage to get himself chosen president and thereupon repeat the coup d'état of 1851. The constitution does not expressly exclude women from being elected to the presidency; but as yet there is no woman suffrage in France and the national assembly contains no women members.

First and second ballotings.

Scrutineers or tellers, whose duty it is to count the ballots, are drawn by lot from the entire membership of the assembly, and in an adjoining room they commence their work as soon as the last name has been called. If, when the result of the vote is announced, it appears that someone has received an absolute majority of all the votes cast, he is forthwith declared elected; but if no one has met this requirement of an absolute majority, the assembly proceeds to ballot a second time, and if necessary it keeps on balloting like an American national convention until a choice is made. As a rule, however, the first ballot is decisive, because a sufficient bloc has been pledged in advance. On only three occasions has a second ballot been necessary, and in no case has the assembly had to ballot a third time.[1] The newly-elected president is then installed at the close of his predecessor's term, but if he has been chosen to fill an unexpected vacancy he takes office at once, for there is no vice president in France.[2] In the interval between the death or resignation of one president and the installation of his successor the council of ministers is vested with the chief executive power and exercises it by the issue of ministerial decrees.

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[1] Not infrequently the president of the Senate is himself one of the candidates for the presidency, but he takes the chair all the same. The French see nothing incongruous in having one of the rival candidates preside over a session at which his own election or defeat is to be determined.

Honors and emoluments of the office.

Judged by the honors accorded him at his election and thereafter, the President of the Republic is a very exalted personage. He is saluted by one hundred guns (the President of the United States gets only twenty-one); he travels in de luxe trains and whole brigades turn out to be reviewed by him wherever he goes. He has all the homage that is accorded to royalty in monarchical countries. During his term he has the use of the Elysée Palace as an executive mansion, and of the Château de Rambouillet as a country residence; he is provided with a presidential box at the opera and has other perquisites of various sorts. His salary is 1,200,000 francs per annum ($240,000 at the normal rate of exchange) with an additional 1,000,000 francs for household and traveling expenses, making a total of about $480,000 per annum in all. The total cost of maintaining the chief executive in the United States, by the way, is now about $300,000 although the official salary is only one-fourth of that sum.

Brief sketches of the presidents.

The Third Republic has had twelve presidents in fifty-five years (1870-1925), so that although the legal term is seven years (with eligibility to re-election) the actual average has been less than five years. Casimir-Périer and Deschanel resigned after holding office for a few months only. Four others resigned after varying periods of service—Thiers, MacMahon, Grévy, and Millerand, all four having been virtually forced out of office by hostile legislatures. Two presidents died in office—Carnot, who was assassinated in 1894, just as his first term was about to expire, and Faure who died when his term was a little more than half completed. Only three presidents have thus far closed their tenure of office otherwise than by death or resignation—Loubet, Fallières, and Poincaré. Thus the presidential office has been all too closely associated with personal and political vicissitudes.

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[1] Second ballots were required to re-elect Grévy in 1886, to elect Faure in 1895, and to elect Poincaré in 1913.

[2] When chosen to fill an unexpected vacancy a president does not merely serve for the unexpired term. He serves out the full seven years.

What manner of men have these thirteen presidents of the Republic proved themselves to be? Like the elective chiefs of state in other countries they have been of varying quality.[1] Some have been strong-willed and capable; others have been mere figureheads; others, again, can hardly be ranked in either category. But there is no trio among them that ranks up to the level of Cleveland, Roosevelt and Wilson in ability, independence, and statesmanship. Whether, on the other hand, the Elysée has sheltered more mediocrities than the White House during the past fifty years is an arguable question,—although hardly worth the arguing.

Thiers, 1871-1873.

Adolphe Thiers, the first of the French presidents, was a statesman of world reputation, qualified both by personal capacity and long political experience for the highest office in any land. He had been a prime minister in the reign of Louis Philippe and was one of the great historians of the nineteenth century. His patriotism and his devotion to the interests of France were beyond question, as was shown in his handling of the peace negotiations in 1871. Conservative in temperament he was not an avowed republican at the time of his election, but he became one before he resigned office in 1873. The Third Republic owes a great deal to its first president, for he tided it through a very critical time.

MacMahon, 1873-1879.

As successor to Thiers, the assembly elected a man of altogether different stripe, a soldier of Irish ancestry, a marshal of France and a protégé of Napoleon III, by name Patrice-Maurice MacMahon.[2] This choice was dictated by the royalists and imperialist factions in the assembly with the hope that it would be a prelude to the extinction of the Republic. Nobody imputed to MacMahon any ambition to set himself upon a throne, but it was felt that he could be readily persuaded to regard himself as a mere stop-gap, and hence to make way for a king or an emperor when the opportune moment for such a shift should arrive. But although frankly an anti-republican, MacMahon had too high a sense of personal honor to engage in any manœuvers to this end, and in any event the hour of destiny kept postponing its arrival. The Comte de Chambord, head of the Bourbon or Legitimist faction, had been the most logical candidate of the anti-republicans up to this time; but he "threw his crown out of the window" by a foolish deliverance in which he declared that the tricolor of France must be discarded and the old fleur-de-lis of the Bourbons restored.[1] The election of MacMahon, as it turned out, was not a prelude to a Legitimist victory, but a death-blow to royalist ambitions.

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[1] A very clever portrayal of the French presidents, by Professor Albert Guérard, under the heading "In the Realm of King Log," may be found in *Scribner's Magazine* for February, 1925.

[2] The Hibernian flavor of this name calls for a word of explanation. MacMahon's ancestors emigrated from Ireland to France in the seventeenth century. Their descendants became thoroughly Gallicized, but apparently did not lose their Celtic fondness for war and politics. Marshal MacMahon made his reputation in the Crimean War and in the War of

Marshal MacMahon, like General Grant, made a better showing on the battlefield than in the executive chamber. He was too blunt, too imperious, too domineering. Eventually (1877) he came into controversy with the Chamber of Deputies by virtually repudiating the principle of ministerial responsibility.[2] Urged by the conservatives to strain his powers a bit, he endeavored to install and keep in office a ministry which did not have the chamber's confidence. Thereby, as it turned out, he aligned himself with a lost cause. The fiery Gambetta, leader of the republicans, declared that MacMahon must either "give in or give up." And when the chamber undertook to make the old soldier give in he had neither the desire nor the unscrupulousness to put through a military coup d'état as his imperial master had done a quarter of a century before. So, when a general election failed to change the complexion of the chamber, he submitted to its demands, installed a responsible ministry, and thus endowed the Republic with a new lease of life. But his surrender gave the chamber a truculent sense of

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1859. He commanded the victorious French armies at the Battle of Magenta. He held a high command in the Franco-Prussian War of 1870, but was wounded before the Sedan disaster came. After the war he put down the Communist revolt in Paris.

[1] See *above*, p. 387.

[2] *Below*, p. 409.

its own power and the president was subjected to various humiliations. The breaking point was reached in 1879 when the chamber asked him to dismiss from the army certain of his former comrades-in-arms who were suspected of being too strongly Bonapartist in their affiliations. Thereupon he resigned from office, a year before his term would have expired.

Grévy, 1879-1887.

The next president, Jules Grévy, was neither a scholar nor a soldier but a typical bourgeois and an enthusiastic republican. His election indicated that the Third Republic was getting set. The monarchists had been so utterly unable to agree, and had so petulantly wrangled among themselves that the country just floated away from them. Grévy was a lawyer by profession, seventy-two years of age at the time of his election, shrewd, cautious, slow-moving, and close-fisted to a degree that soon became proverbial. It was well that he could number shrewdness among his virtues, since there was need for all that he could command. His tenure of the presidential office was a lively one because the chamber kept upsetting his ministries one after another. After a while the people grew tired of this political turmoil and a movement for the revision of the constitution began to make headway. Thereupon the trouble-makers came to the front, particularly the redoubtable General Boulanger of whom more will be said a little later.[1] For a time it looked as if France might again pass under the ægis of a military dictator. Grévy was not popular, neither was he a man of brilliant parts, but his native astuteness enabled him to sidestep the pitfalls. He even managed to secure his own re-election in 1886, mainly because no strong candidate appeared in the field against him. But his second term was of short duration, for the Wilson scandals forced his resignation before the close of 1887.[2]

Carnot, 1887-1894.

Grévy's successor was a "dark horse" among the presidential candidates. There were three outstanding candidates for the post, no one of whom seemed likely to obtain a clear majority in the national assembly. As a compromise Clemençeau persuaded the leaders to agree upon Sadi Carnot and he was chosen on the first ballot. Carnot was a civil engineer by profession, a former minister of public works, and the heir to an historic name,[1] a cultivated, industrious, and well-intentioned statesman of fair ability whose chief desire was to make the wheels of government run smoothly. But in this he did not succeed. The Boulanger agitation, the Panama scandals, and other high explosives shook the country. Radicals and revolutionaries used the opportunity to fish in the troubled waters. France was overrun with *démolisseurs*. The air became surcharged with rumors of bribery and corruption, involving everyone from ministers down. The whole country seethed with restlessness. Presently one anarchist threw a bomb into the Chamber of Deputies; another stabbed the President and killed him. These outrages brought the excited nation back to its senses.

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[1] *Below*, pp. 493-494.

[2] For a brief account of these scandals, see *below*, p. 492.

Casimir-Périer, 1894-1895.

The murder of Carnot was followed (as such tragedies always are) by a wave of popular indignation. The country rang with demands for law and order, for a suppression of radicalism, for the application of the iron hand. There was a reaction to conservatism, and on the crest of this wave a leader of the conservatives was swept into the presidency. This new incumbent of the office was Casimir-Périer, a statesman whose ancestry, social position, and affiliations with the big business interests seemed to be a sufficient guarantee that he would bring the country back to normalcy.

Casimir-Périer was no neophyte in French politics, for he had already served as president of the chamber and as prime minister. He was too masterful a man to content himself with a career of inactivity and should never have been chosen to a figurehead post. When he found that there was no organized anarchism, and that the social order was safe, he chafed in his narrow cage. Moreover, he was too emotional and too sensitive to withstand the volleys of criticism and vituperation which were fired at him from behind the barricades of radicalism. The Dreyfus affair, which now came to the front, worried him greatly.[2] He persisted in reading the radical newspapers which were filled with slanderous attacks on his character and with incitements to violence. Not having sought the presidency, Casimir-Périer saw no good reason why he should worry himself to death in an office which afforded no scope for the exercise of his own initiative. So he decided to resign. In spite of persuasions and protests he insisted on this step and was out of the presidency in less than six months from the date of his election.

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[1] He was a grandson of Lazare Carnot, the "organizer of victory" during the Great Revolution.

[2] *Below*, pp. 495-496.

Faure, 1895-1899.

For the second time within a twelvemonth the national assembly was convened to choose a president. On the first ballot the radicals were united while their opponents were not. But the latter closed up their ranks on the second ballot and secured the election of Félix Faure. Unlike his two immediate predecessors, Faure was a man of humble birth who had risen by his own diligence to be a wealthy shipowner and member of the ministry. He was known to possess a mild and compromising individuality. There was no danger that he would become a man on horseback. The times called for extreme caution, because the Dreyfus case was now turning the whole country into a bedlam. Faure showed poor judgment, however, in allowing himself to be drawn into an alliance with the anti-Dreyfusards and thus becoming a center around which the storm could rage. Before the controversy was over he died suddenly, and of course the Paris gossips added "mysteriously," but there appears to have been no good grounds for their suspicions in this case.

Loubet, Fallières and Poincaré, 1899-1920.

The next three presidents, Loubet, Fallières and Poincaré, served out their full septennates without mishap. Together their terms covered the first two decades of the new century. Loubet and Fallières were unaggressive, self-effacing men who had risen from the ranks of the peasantry. Both had singularly uneventful terms in office, for although there were some political flare-ups, more particularly over the relations of church and state, the grave dangers which threatened the Republic in its earlier days had subsided. Loubet was suspected of having opinions of his own, but he never vented them. Fallières revived at the executive mansion the bourgeois virtue of thrift and got himself much satirized in consequence.[1] Poincaré had the task of carrying the presidency through the world war and he did it with great skill. On his retirement from the Elysée it was generally assumed that the octogenarian Clemenceau, now known as "Old Father Victory" by reason of his having served as prime minister during the closing years of the great conflict, would be chosen as Poincaré's successor. But Clemenceau was an anti-clerical and the ultramontanes united their forces to defeat him. They succeeded in forming a bloc behind a rival candidate, Paul Deschanel, and elected him. So the Old Tiger went his way, while the booming of guns welcomed the accession of a journalist-statesman from the next generation.

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[1] On one occasion, it is said, he subscribed a thousand francs to a relief fund after a catastrophe had occurred in one of the French cities. Madame Fallières reproved him for this largesse, whereupon the President retorted that he was going to even things up by cancelling, on account of the disaster, a scheduled reception at the Elysée. "So I am still ahead of the game," he chuckled, "*J'y gagne encore*," and the expression was seized upon by every cartoonist in Paris.

Deschanel 1920.

Deschanel was not a man of destiny and his tenure of the office proved to be even shorter and more tragic than that of Casimir-Périer had been. A mental breakdown came upon him with inexplicable suddenness and snatched away the prize which he had labored many years to gain.[1] He was in office but a few months and died soon after he left it.

Millerand, 1920-1924.

As his successor the assembly chose Alexandre Millerand, a publicist who had figured prominently in French political life for more than twenty years. He had begun his career as a socialist, at a time when socialism was low in the public favor, but soon antagonized his socialist friends by entering a bourgeois ministry. Thereafter his rise was steady; he eventually became prime minister and gained the confidence of the conservative elements in the chamber. Although a heavy, sleepy-eyed man in appearance there is nothing sluggish in Millerand's mentality, as France had long since discovered. He was the choice of the national bloc, which had the votes to insure his election by the assembly.

Millerand began his term with a declaration that the powers of the president ought to be increased. The presidential office, he believed, ought to be approximated to that of the United States. He even intimated that he proposed to do what he could toward this end, and if he had actually insisted upon any such course it would have speedily embroiled him with his ministers. But he did not manage to put his theory into practice. On the contrary he worked amicably with Poincaré, who eventually became prime minister, and allowed himself to be dominated by the latter. The relations between the two became so close, in fact, that the president drew upon himself the bitter hostility of Poincaré's political opponents. They felt that his partiality to the national bloc was not in keeping with the strict political neutrality which the French constitutional system expects the chief of state to maintain. Accordingly, when this bloc lost control of the chamber at the elections of 1924, the incoming *bloc des Gauches* insisted that the president as well as the prime minister must resign. Millerand at first declined to comply with this demand, but he soon found that no ministry possessing the confidence of the chamber could be formed so long as he retained the presidency. So he was forced to accept the situation and relinquish his office. In his place the national assembly elected Paul Doumergue, presiding officer of the Senate, who will serve until 1931 unless some mishap occurs. Doumergue is counted upon neither to reign nor to govern, neither to act nor to think on his own initiative—in other words, to bring back the placid days of Émile Loubet.

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[1] The first public intimation of it came when the President of the Republic was found, early one morning, trudging along the railroad track in his pajamas. He had leaped from a train. They sent him to Rambouillet to recuperate, and he walked out into a pond. Fate is often relentless in its ways.

Doumergue, 1924—

Why so few great and striking men?

It will be seen, therefore, that men of widely varying types have held the chief executive office in France, even as they have done in America, and are likely to do in any republic. King Log and King Stork have both had their turn. In France, as in America, the critics complain that great and striking men are ignored for mediocrities. Gambetta, Ferry, Dupuy, Waldeck-Rousseau and Clemenceau failed to reach the Elysée, even as Webster, Clay, Calhoun and Blaine failed to reach the White House. The reasons are much the same in both countries. Men of strong and aggressive personality do not usually make good candidates. By being aggressive they create too many centers of antagonism. The party leaders in both countries prefer "safe" men who will not insist upon coloring the whole government with their own individuality. In France this is almost necessarily the case, for the experience of President Millerand showed that belligerent partisanship is out of place in the presidential office. A strong man naturally desires to govern, which is exactly what a French president is not supposed to do.

The Fathers of the Third Republic made a serious mistake when they provided, on the one hand, that the president should be chosen by the representatives of the people and on the other hand that he should have only nominal powers. Under such an arrangement there are only two alternatives—either that men without dominating traits will be chosen, or that strong men will make trouble. The nation which entrusts only nominal authority to its chief of state must not expect to find a succession of Bonapartes, Bismarcks, Lincolns, and Gladstones in that high office. To obtain eminence you must bestow power. If you insist upon having a figurehead at the pinnacle of a government the best way to secure him is by the law of primogeniture. There is some danger that even by taking the eldest son of an eldest son you will occasionally obtain a monarch who desires to govern as well as to reign, but the danger is less by this method than by any other. Among all forms of executive organization an elective monarchy has probably the least to be said in its favor.

The president's powers.

What are the powers of the French president? In general they are surprisingly like those of the English king. He summons the two chambers of parliament; he may propose laws; he has a suspensory veto on laws passed by the French parliament (but he never exercises it); he appoints all the higher officials; he negotiates treaties; he sees that the laws are executed; he is the commander-in-chief of the army and navy; he has the power of pardon; and he may dissolve the Chamber of Deputies if the Senate concurs, but there has been no such dissolution for nearly half a century. All these powers are given him by the constitutional laws of France, subject only to one proviso, namely, that they shall be exercised by him on the advice of responsible ministers. But this proviso is an all-important one. It is so important, indeed, that its insertion makes all the difference between real power and the mere shadow of it. Those who have studied the government of England will need no assurance on that point. The provision for ministerial responsibility means that France has the parliamentary type of government like England, and not the presidential type of government like the United States. Every official act of the French president must have a ministerial countersignature. The only document that does not require it is his letter of resignation.

To the mind of the average American the term republic suggests a particular form of government, namely, the antithesis of monarchy. Anything that calls itself a republic, he imagines, must bear some resemblance to the American Republic. But there is no magic in terminology. You can have a republic which is a monarchy in everything but name. And that is the sort of republic which the French people have chosen to maintain. It is a unitary republic, wholly unlike that of the United States, which is federal. It is a parliamentary republic, wholly unlike that of the United States, which is presidential. It is a republic without a system of checks and balances. If you want to find the prototype of the French president look therefore to Buckingham Palace, not to the White House.

Powers in relation to the chambers:

The President of the French Republic summons the Senate and the Chamber of Deputies for their annual sessions, and prorogues them when their work is done. Both of these things he does on the advice of his ministers. But if he fails to convoke them prior to the second Tuesday in January, the two chambers meet of their own accord. And their sessions must not be brought to an end by the president until they have sat for at least five months. Meanwhile he may adjourn the chambers but not for more than a month at a time and not more than twice in the same session. All this, of course, differs essentially from American practice, for the President of the United States does not regularly summon, adjourn, or prorogue either branch of Congress.

1. The initiative in law-making.

The constitutional laws of 1875 give the French president the right to initiate proposals of legislation; but this means nothing, for he can only initiate through his ministers. And it is easier for the ministers to bring in the proposals directly. The president does not address either of the two chambers in person, but he may communicate with them by sending messages to be read from the tribune by some member of the ministry.

What it amounts to.

No president during the past fifty years, however, has sent such messages except to express thanks for his election or to announce his resignation. There would be no point in his sending messages of any other sort for they would have to be countersigned by a minister; hence a presidential message would amount to nothing more than a ministerial communication which the minister could better make on his own responsibility. The president's initiative in law-making is of no greater importance, therefore, than that of the English king.

2. The suspensory veto.

The President of the Republic has a suspensory veto. When a law has been passed by both branches of the French parliament it does not go into effect at once. It must first be officially promulgated, in other words the president must publish it and declare it to be in force. This he ordinarily does within one month, but if parliament designates the law to be urgent he must promulgate it within three days. If, however, he disapproves the measure, he is empowered to withhold promulgation and return it to the chamber for reconsideration. Then, if the chambers stand their ground, he must promulgate the measure at once. No two-thirds vote of the chambers is necessary in France, as in the United States, to override the president's veto.

It is never exercised.

But this suspensory veto in France is of no practical consequence because it is never exercised. No president since 1875 has sent back any measure for reconsideration, and it is not likely that any president ever will. The reason is that he could not take such action except on the advice of his ministers, and these ministers are in control of the French parliament, otherwise they would not be ministers. So, if the ministers disapprove a measure they oppose its passage in the Chamber of Deputies, and if they do not succeed in defeating it they resign from office. They could not let such a measure pass both chambers and then advise the president to send it back. It is difficult to conceive of a responsible ministry being able to advise any sort of executive veto on the action of a legislative body by which they are controlled. The insertion of this provision in the French constitutional law of 1875 indicates that its framers did not clearly understand the practical implications of ministerial responsibility. So the fact is that the President of the Republic has no veto power; he promulgates every law as a matter of routine. In doing this he does not affix his signature to the law but to the decree of promulgation which accompanies it. ✓

3. The ordinance power.

All this must not be understood to imply, however, that the President of the French Republic has no share in the process of lawmaking. He neither proposes laws nor vetoes them; but his office has a very considerable part in the elaboration of laws after they are passed. This is because there has been developed in France a form of legislative activity with which

Americans are only to a slight degree familiar, namely, the practice of supplementing laws by the issue of ordinances, decrees, and administrative instructions. The laws passed by the French parliament are usually couched in general terms. Unlike the statutes which are enacted by the British parliament or the American congress, they do not try to include every detail and to provide for every possible contingency that may arise. On the contrary, they lay down certain broad principles and leave the details to be supplied by executive decrees issued in the name of the president.[1] These decrees must not, of course, modify any substantive provision of the law; but so long as they keep within its general purport they can stiffen or liberalize the details at will. Any controversy as to whether the ordinance is out of harmony with the general provisions of the law goes to the highest administrative court for decision, that is, to the council of state. For this reason ordinances of public administration are submitted to the council of state for scrutiny before being promulgated. In some instances the chambers have gone so far as to turn certain matters over to the president for regulation by ordinance without laying down any statutory rules at all. All this gives the president some influence upon the details of legislation although one should hasten to add that the president takes no personal responsibility for the drafting of these decrees. The work is done by his ministers, or, more accurately, by subordinates of the ministers.

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Executive legislation in America.

Americans who go to France and see the billboards covered with multifarious ordinances and decrees, issued by officials of all ranks from the president down, are prone to think this a strange method of lawmaking and to indulge in the reflection that there is nothing like that in their own country. They are wrong. There is a good deal of it in the United States. Congress leaves a great many things to be settled by executive orders and regulations. Take the immigration laws, the postal laws, the laws governing interstate commerce, and, as the best illustration of all, the federal tax laws. They are not posted upon the billboards, to be sure, but there are whole volumes of orders and regulations that have been issued by the executive branch of the American national government under the general provisions of these statutes. When the secretary of labor, "by order of the President," issues a set of rules relating to the handling of immigrants at the port of New York, he is doing precisely what the French ministers do by ordinance or decree. It is true, of course, that there is not yet so much executive legislation in the United States as in France, but it is growing rapidly.

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[1] Most of the general statutes conclude with some such provision as this: "An ordinance of public administration shall determine the measures appropriate for securing the exercise of this law." Sometimes the provision is more specific in prescribing the scope and nature of the ordinance.

4. The power to dissolve the chamber.

The President of the French Republic with the approval of the Senate, has power to dissolve the Chamber of Deputies at any time, but only in one instance has there been such a dissolution.

The affair of May 16.

This was on the occasion of the famous *Seize Mai* in 1877 when President MacMahon appealed to the country in the hope that it would support his attempt to keep a reactionary ministry in power. But the country refused to uphold the president's action and by so doing ultimately forced him to resign. Thereby was established the principle that a president who dissolves the chamber gives his own tenure of office as a hostage to success. If a ministry cannot retain control of a majority in the Chamber of Deputies it must not, according to the usages of French government, seek the concurrence of the Senate and advise the president to dissolve the chamber. It is not the custom in France, as in England, to regard the ministers as having the right to appeal from the chamber to the electorate. In France such action is popularly deemed to have the flavor of a coup d'état. So, if a ministry loses control of a majority in the chamber it must resign. It does not have the alternative of procuring a dissolution. If a French ministry, while still retaining control of a majority in the chamber, should advise a dissolution (with the concurrence of the Senate) the president would have to act in accordance with this advice; but it is hard to imagine a ministry doing anything of the sort.

5. The appointing power.

All civil officials, all officers of the army and the navy, are appointed in the name of the president. But the actual appointing power resides in France just where it resides in England. In neither country is there any personal discretion on the part of the titular chief executive. In France all the higher officials of administration are nominated to the president by his ministers, and are then formally appointed by presidential decree. It is true that the president sometimes recommends certain candidates to the favorable attention of the ministers, just as any citizen of the Republic has the right to do; but the ministers are under no obligation to heed such recommendations. An appointment is virtually made when the ministers agree on it, and occasionally it is announced before the presidential decree has been prepared. Casimir-Périer, during his short and fretful term of office, complained that his first knowledge of high appointments often came to him through the morning newspapers, the ministerial nominations reaching him later in the day.

Appointments to subordinate posts are made by the ministers directly, and these include the largest number of positions. In each case a decree of appointment is issued over the signature of the minister concerned. The president, on the advice of his ministers, may also remove officials from office, subject to a few constitutional exceptions.[1] Ordinarily no new positions may be created except by action of parliament, which alone has power to appropriate money for salaries; but in certain contingencies new offices may be established by presidential decree. Parliament also prescribes the qualifications for every office, and it has dealt with such matters at great length.

6. The president as commander-in-chief.

The President of the Republic is commander-in-chief of the army, the navy, and the air forces. On the advice of the minister of war and the minister of marine he determines where each unit of the armed forces shall be stationed. But the size of the military, naval, and air establishments is determined by parliament which fixes the annual quota of recruits and appropriates the money required by all branches of the service. By the provisions of the constitutional law a declaration of war requires the assent of both chambers; but it is self-evident that the ministers, who control both the diplomatic policy and the disposition of the armed forces, may create a situation in which the chambers have no discretion in the matter.[2]

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[1] In France, as in other countries, the power to grant pardons is given to the chief executive. This authority he exercises, in all cases, on the advice of the minister of justice. The constitution expressly provides, however, that an amnesty (that is a general pardon to all offenders of a designated class) must have the assent of both chambers.

[2] The Constitution of the Second Empire (January 14, 1852) gave the Emperor the right to declare war without the assent of the legislative chambers.

7. His relation to foreign affairs.

In international relations the President of the Republic is a figure of far less importance than is the President of the United States. It is true that ambassadors who come to Paris as the diplomatic representatives of other countries are accredited to him. It is also true that, in form at any rate, he appoints the French ambassadors at other capitals. The instructions to these diplomatic representatives are also given in his name. But the actual framing of the instructions is in the hands of the minister of foreign affairs and his immediate subordinates. So it is with treaties. They are negotiated, in the name of the president, by the same minister. They are signed by the minister of foreign affairs or by somebody whom this minister designates. As a matter of courtesy the president is kept informed regarding the course of diplomatic affairs and the negotiation of treaties. As a matter of courtesy, also, the ministers often seek his opinion, but they are under no obligation to be guided by it. The French president's influence upon foreign policy, in a word, can only be exercised in an indirect and unofficial way. The American reader need not be reminded that no such procedure is followed at Washington. In America the president may (and sometimes does) give diplomatic instructions directly from his own pen, without consulting any of his official advisers, not even the secretary of state. During the world war it was President Wilson's custom to prepare diplomatic communications on his own typewriter and then send them to the state department to be signed.

Treaties.

It is not a constitutional requirement in France, nor yet does usage require that all treaties shall be laid before parliament for ratification. The terms of treaties need not be communicated to the chambers if the "interest and safety of the state" require them to be kept secret; but treaties of peace, treaties of commerce, treaties which involve financial obligations, and those which relate to the personal status or the property rights of French citizens in foreign countries do not become effective until they have been communicated to both chambers and ratified by a majority vote in both of them. The same is true of treaties which involve any change in the boundaries of territories belonging to France.[1] But military agreements and treaties of alliance do not come within the foregoing category and they have usually been kept secret. The terms of the French alliance with Russia, and of the entente with England prior to the world war, for example, were never submitted to the French parliament.[1]

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[1] The establishment of a protectorate, however, does not require action on the part of the chambers. Nor has the rule relating to boundaries been

How the president may be removed from office.

The president is not amenable to the jurisdiction of the ordinary courts. He may not be arrested, tried, or condemned for any legal offence, civil or criminal. But provision is made for his impeachment in case he is charged with the crime of high treason. The charge must be brought by the Chamber of Deputies, and the impeachment is tried by the Senate. A majority is sufficient to convict, and no limit is placed upon the penalty which may be imposed. In both these respects the French procedure differs from that laid down by the constitution of the United States which requires a two-thirds vote for conviction and restricts the penalty to removal from office and disqualification. No president of the French Republic has ever been impeached.

The president and the prime minister.

The narrowness of the president's part in legislation, in the making of appointments, and in the conduct of foreign affairs must not be over emphasized. For be it borne in mind that the president chooses the prime minister (who, in turn, selects the other ministers) and he sometimes finds himself able to exercise considerable discretion in making the choice. He is not always under obligation to choose a designated individual as his prime minister. This is because there is no dominant party in the French chamber but only a dominant bloc. And this bloc may contain more than one leader who is in a position to command its support. On such occasions the president may use his own judgment in selecting a prime minister, but these occasions are becoming less common and in any event his range of choice is never very wide. Usually he confers with the presiding officers of both chambers, obtains their advice as to the man who is best qualified to form a new ministry, and then follows it. Remember that the president is himself no greenhorn in prac-

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strictly adhered to. The Franco-British agreement of 1889 which established certain boundaries on the west coast of Africa was not submitted to the chambers for their assent.

[1] The Covenant of the League of Nations, to which France is a party, now requires that all treaties (including treaties of alliance) shall be registered with the secretariat of the League and made public.

tical politics. He has had to do with parties and factions and blocs. He knows who's who in the chamber. And not often does he fail to pick the right man, that is, a prime minister who can command a majority.

One overshadows the other.

To choose anyone who cannot hold the confidence of the chamber is to bring trouble upon his own shoulders. For it is the prime minister, not the president, who steers the ship of state. Raymond Poincaré was President of the Republic from 1913-1920. His name and fame were little known outside the bounds of France during these seven eventful years. But when Poincaré became prime minister in 1921 his name went almost daily into the headlines of the newspapers in all parts of the globe. What he had to say about the Ruhr or reparations was eagerly read everywhere, for the world realized that he had now become the real and not the nominal spokesman of his people. The President of the Republic gets the honors and the salutes; but it is the prime minister whose utterances go on the wires and cables.

The future of the presidentia office.

Many Frenchmen are far from satisfied with the rôle which the constitutional laws have given to their chief of state. "It is a fundamental principle of the constitution," says one facetious writer, "that the president shall hunt rabbits and not concern himself with affairs of state." But two million francs per annum would seem to be a high price to pay for a rabbit-hunter, who is not always an expert at that.[1] Another French critic speaks of the president as condemned to "listen at conferences where he is supposed to express no opinion and to promulgate decrees which he cannot disapprove." This lack of power has naturally impaired the prestige of the presidential office for no man can be compelled, year after year, to act upon the advice given him by second-rate politicians without losing the public respect. So there are some who believe that the presidential office should either be abolished altogether, or else made a position of real power, as it is in America. From time to time the various radical parties have urged the substitution of a collegial executive, and on one occasion a constitutional amendment to this end was proposed in the national assembly, but it was ruled out of order. Of late years the proposal to abolish the presidency has been dropped and the suggestion that its powers be increased has been obtaining more serious discussion.

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[1] It is the president's obligation to hold official shooting parties at Rambouillet, even though he may be very gun-shy himself. Some years ago it was gossiped all over France that a certain general owed his promotion to the fact that he had been riddled, *a posteriori*, with rabbit-shot from a gun in the hands of an erratic chief of state who persuaded the minister of war to salve the wounded warrior's feelings (and flesh) by an advance in rank.

Where the difficulty comes.

But nobody has been able to suggest a way of increasing the president's authority without changing both the spirit and the form of French government. A ministry must be responsible either to the chief of state or to the legislative body. It cannot be responsible to both, for no ministry can serve two masters. There is no way to increase the authority of the president except by taking power from the ministers, and through them from parliament. This, the French parliament is not in the least inclined to do. It does not propose that the executive shall become a coördinate branch of the government as it is in the United States. Far from showing any disposition to relinquish any of their powers, the chambers have steadily striven to usurp what little authority the president has not already lost. It was thought in some quarters that the election of Poincaré to the presidency in 1913 would be followed by a rise in the prestige of the office, for Poincaré was the ablest and best-equipped statesman who had gone to the Elysée since the time of Thiers. But even under Poincaré the powers of the presidency did not expand. Again, in 1920, when Millerand rode to the palace amid the booming of a hundred guns it was predicted that here at last was a man who would not fear to put the issue to the touch. But the prophets were once more astray as the triumph of the chamber demonstrated in 1924. When the chamber forced Millerand out of office, before his term was half run, it settled the question of political supremacy for some time to come. So the President of the Republic remains, and doubtless will remain, a *roi fainéant*,—a phantom king without a crown.

The position and powers of the president are fully discussed in Adhémar Esmein's *Droit constitutionnel français* (7th edition, 2 vols., Paris, 1921), Vol. I, pp. 32-207; Léon Duguit's *Traité de droit constitutionnel* (2nd edition, 4 vols., Paris, 1923-1925); G. de Lubersac, *Les pouvoirs constitutionnels du Président de la République* (Paris, 1911);

Henri Leyret, *Le Président de la République* (Paris, 1912), and in E. M. Sait's *Government and Politics of France* (New York, 1920), chap. ii. On the characteristics of the presidents see E. A. Vizetelly, *Republican France: Her Presidents, Statesmen, and Policy* (London, 1914).

CHAPTER XXII

THE MINISTRY AND THE ADMINISTRATIVE SYSTEM

France is governed, eight months of the year by a parliament, and four months of the year by a ministry.—*Émile Faguet.*

The derivation of a term.

Many years ago Raymond Poincaré, at that time minister of finance, was strolling along a country road when he heard a voice cry out from behind him: "Get along with you, you confounded minister." Less surprised at being insulted than at being recognized, he turned around and saw a peasant trying to make a donkey move faster. "There's no making this minister go," growled the peasant. Thus M. Poincaré learned that in certain corners of France an ass is called a *ministre*, not out of disrespect for this humble beast of burden, but because he is the chief servant of the peasantry, entrusted with all manner of work that needs to be done. And after all, Poincaré goes on to ask, are not ministers of state the servants of the nation? For the term, in Latin, means the lowliest, just as its antithesis (magister) means the greatest.

The basis of a minister's responsibility.

The ministers of the Republic are the servants of the people, accountable to the representatives of the people in parliament. In France, as has been shown, the president is chosen by the two chambers, but is not responsible to either of them. He cannot be brought to task for any official act. There is only one way in which the chambers can directly exert their power upon the president, which is impeaching him for high treason. The President of the Republic is thus in the position of a constitutional monarch. He can do no wrong, or at any rate no wrong that is cognizable in the ordinary way. But if the president stands above the reach of the chambers, his ministers do not, and it is through them that the French parliament exercises a full and uninterrupted control over the official acts of the chief of state. In England this control is the outcome of usage; in France it rests upon the explicit terms of a written constitution.

Origin of the French ministry: A borrowed institution.

France, nevertheless, borrowed the institution from England. The leaders of French liberalism, after the overthrow of Napoleon, believed that the smooth functioning of English government was largely due to the existence of a responsible ministry, a ministry responsible to parliament. So they transplanted this institution to France, in the hope that it would take root. Through the period of the Restoration and under the Orleans monarchy it struggled along; but during the Second Empire it withered to a yellow stalk. The founders of the Third Republic determined that it must be nourished and revived, so they made provision to that end and their efforts have proved during the past fifty years to have been moderately successful.

What the French constitution now provides.

The constitutional laws of 1875 provide (1) that "every act of the president shall be countersigned by a minister," and (2) that "the ministers shall be collectively responsible to the chambers for the general policy of the government, and individually for their personal acts." Here, in thirty-three words, is an attempt to set down the essential principles of cabinet responsibility as they have been slowly evolved in England during a period of several hundred years. The chief of state is not responsible to the representatives of the people, but he must act through ministers who are responsible. Thus the French constitution, in explicit terms, requires the ministers to exercise the functions of the presidency just as in England usage requires the cabinet to exercise the functions of the crown. In the United States, by way of striking contrast, there is no requirement, either in the constitution or by usage, that all acts of the president shall be countersigned by anybody whomsoever, much less by anyone who is responsible to Congress.

How a prime minister is selected.

The constitutional laws of France make mention, several times, of a council of ministers, but do not prescribe how many ministers there shall be, or how they shall be chosen. Everybody assumed that the president would appoint them, and he has done so. But although the president *appoints* the ministers this does not mean that he *selects* them. He selects only the prime minister, who, in turn, picks all the others.[1] The procedure is almost exactly like that followed in England. The president summons his choice for the prime ministership and requests him to undertake the task of getting together a council of ministers or cabinet which can command the confidence of parliament. That done, he merely awaits the outcome.

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[1] The official title is not prime minister but president of the council of ministers, although prime minister is the customary title.

To what extent may the president pick and choose?

In making his selection of a prime minister the President of the Republic does not have, as a practical matter, much freedom of choice; but he has somewhat more latitude than is given to the king in Great Britain. There the king must send for the recognized leader of the opposition in parliament. He can do nothing else. But in France there is usually no recognized leader of the opposition, or, to put it more accurately, there may be several who have approximately equal claims to be regarded as opposition leaders. And this for the reason that there are a dozen party groups in the Chamber of Deputies, each with its own leader, and sometimes with more than one leader. Several parties are usually combined into a bloc; but it is not at all times certain that the bloc will have a single outstanding leader. In such cases the President of the Republic, when one prime minister goes out of office, is able to use some discretion in determining which one of these various leaders he will summon to form a new ministry.

Even so, however, his range of choice is rarely wide, for the exigencies of the moment usually point to some one individual as the logical successor of an outgoing premier. The president therefore confers with those who are best able to judge the relative strength of the various party groups and finally settles upon the individual who seems most likely to succeed in gathering a majority behind him. More particularly he consults with the president of the Senate and the president of the Chamber of Deputies. They know the twists and turns of party alignment in the respective chambers over which they preside. The President of the Republic is assumed to be a neutral in politics; he must show no favoritism. It is his business to pick a winner. He is open to criticism if he does not do it at the first attempt. But occasionally it appears that there are two or three men, any one of whom would probably be able to form a working coalition among the various party groups and thus get a majority bloc behind him. On such occasions the president can summon any one of them. But this opportunity does not come to him very often, and in the present drift of French party alignments it is altogether unlikely to come at all. For the various parties, as will be explained in a later chapter, have been slowly but surely gravitating into two great coalitions.

The process of forming a ministry.

Having settled upon his man, the President of the Republic requests him to form a ministry. The request may be declined, as has frequently happened, whereupon the president turns to someone else. There have been times, indeed, when three declinations have followed in succession. But as a rule the president gains a provisional acceptance from the first statesman whom he summons, and the work of cabinet-making begins. The prospective prime minister hastens to confer with the leaders of several party groups, and by offering each group one or more representatives in his ministry endeavors to assure himself of a majority in the Chamber of Deputies. According to the gossip that one reads in the Paris newspapers during a ministerial crisis, all his hours are spent in a hurried round of interviews, overtures, pourparlers and solicitations. He finds that one leader will come into his ministry if another is kept out, or that he will stay out unless another is brought in. The *démarches* may go on for days, even for weeks, before the prime minister succeeds in getting his slate made up. Sometimes he fails in the attempt, in which case he returns to the president and suggests that somebody else be asked to take the task in hand.[1] But if he succeeds, he submits the names of his ministerial associates and they are at once summoned to take charge of their respective offices.[2] The president has had no share in the choosing of these ministers, at any rate no open share. He has no power to reject any name submitted to him. He must take the new ministry intact. Then the prime minister confronts the Chamber, asks for its support and usually suggests that it pass a formal resolution of confidence. When this resolution is adopted, the ministry is securely in office until the Chamber of Deputies withdraws its confidence which it may do at any time.[3]

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[1] In June, 1914, President Poincaré tried five different leaders before he found one who could form a ministry with a majority of the Chamber behind it.

[2] The new prime minister is appointed by presidential decree with the countersignature of the retiring prime minister. The other ministers are appointed with the countersignature of the new prime minister.

[3] On a few occasions a ministry has been formed with the full expectation that it would command a majority, but on going before the Chamber the

Must the French ministers have seats in parliament?

It is not necessary in France, as in England, that all members of the ministry shall be members of parliament. Nor are they forbidden, as in the United States, to be members of the legislative body. The constitutional laws are silent on this point. But as a matter of usage the prime minister is always chosen from among the leaders in parliament and almost invariably he is a member of the lower chamber. With rare exceptions, too, the ministers are selected from among active parliamentarians. In the early years of the Third Republic it was thought advisable to select the minister of war from among the high officers of the army, and the minister of marine from the list of French admirals; but this practice has not been regularly adhered to in recent years. A French minister who is not a member of parliament is now rather uncommon.

Size of the ministry.

The size of the ministry is not fixed by the constitutional laws or by ordinary statute. The president, with the advice of the prime minister, decides how many members there shall be in each new ministry.[1] A presidential decree fixes the number whenever the new ministry comes into office. The silence of the laws does not imply, however, that the Chamber of Deputies has no control over the size of the ministry; on the contrary, it can reduce or increase its membership at any time by virtue of its control over the appropriations for ministerial salaries. When, therefore, the president fixes the size of the ministry, his action is contingent upon the readiness of the chamber to vote the sums required.

Pay of the ministers.

A uniform salary is paid to all members of the ministry—sixty thousand francs per annum. Ministerial salaries do not vary, as in Great Britain, from one department to another. Even the prime minister in France receives the same salary as his associates. Each minister, in addition to his salary, is entitled to occupy an official residence which is maintained at the public expense.

Before the world war the French ministry contained twelve members; during the war the number was shifted several times.[2]

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new prime minister has found his calculations upset. This happened in the case of the Ribot ministry ten years ago. The prime minister resigned at once.

[1] In only one case has a ministerial post ever been established by law, namely, the post of minister of the colonies, which was created by statute in 1894.

[2] It usually included some members without portfolios.

After 1918 it settled down at fifteen but the Herriot ministry (1924) contained only fourteen members. These fourteen ministers held the following portfolios: (1) justice, (2) foreign affairs, (3) interior, (4) finance, (5) war, (6) marine, (7) public instruction and fine arts, (8) public works, posts and telegraphs, (9) commerce and industry, (10) agriculture, (11) colonies, (12) labor and public health, (13) pensions, and (14) liberated regions. The prime minister selects one of the foregoing departments for himself, usually the one for which he deems himself best fitted. If he does not take the department of justice, the minister of justice ranks next to the prime minister and is vice president of the council of ministers. In any event, the minister of justice is president of the council of state (the highest administrative court in France) and keeper of the seals, which makes him the lineal successor of the pre-revolutionary chancellor. The other ministers have departmental duties which, in a general way, are indicated by their respective titles.

The existing portfolios.

The minister of justice occupies a post somewhat akin to that of the attorney-general in the United States. He nominates or appoints the judges and other judicial officers. All applications for pardons are dealt with by him, and his recommendations are followed by the president. The minister of foreign affairs conducts the relations of France with other countries; he has supervision of the diplomatic and consular services. The post is of such high importance that the prime minister, in recent years, has frequently taken it for himself.[1] The minister of the interior has functions widely different from those which are performed by the secretary of the interior in the United States. He is the general supervisor of the local government in France. All the prefects report to him; and the work of the police throughout the Republic is under his direction. He is sometimes referred to as the "minister of public order," which is a more descriptive designation than the one which he officially bears. The minister of finances is a chancellor of the exchequer and secretary of the treasury combined. He prepares the budget and presents it to the Chamber of Deputies. He is responsible for the collection of the national revenues; he has charge of

Individual functions of the various ministers.

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[1] In the Painlevé ministry (1925), however, the prime minister took the war portfolio.

expenditures and loans, and supervision of the currency and banking. In addition he is responsible for the management of the government monopolies, particularly the tobacco monopoly. The minister of public works, posts and telegraphs is in charge of public buildings and national highways. In addition he is postmaster-general of France and manages the telegraph and telephone services which are owned by the national government. The minister of public instruction and fine arts exercises a general supervision over the system of public education, including the elementary, secondary and technical schools. His supervisory jurisdiction includes the University of Paris, as well as the national libraries, museums, and other public institutions of an educational nature. The minister of colonies nominates the governors and other officials in the French colonial possessions and has the same general functions as those which pertain to the secretary for the colonies in Great Britain. The ministers of war, of the marine (navy), pensions, of commerce and industry, of public health, and of agriculture have duties which require no detailed enumeration. The minister of the liberated regions has charge of reconstruction work in the territory which was devastated during the world war.

The working day of a minister.

"The conscientious minister," says Poincaré, "has his day well filled. In the morning, when he enters his study, he finds a formidable mass of correspondence on his desk. The correspondence which is not addressed to him privately is of course opened and examined by employés, but a large number of letters remain which he is compelled to read through. Most of these come from senators or deputies, who have acquired the annoying habit of recommending candidates for every species of post. Shortly before nine o'clock the minister gets into his coupé or motor car, the coachman or chauffeur of which wears a tricolor cockade. He is driven to the Elysée if there is a council of ministers, or to the ministry over which the prime minister presides if there is a cabinet council. The council sits till midday. On days when it does not sit the minister receives officials or members of parliament. There is an interminable procession of people soliciting favors. After lunch the minister goes to the Chamber or the Senate. When he returns he finds all the desks and tables in his office loaded with great portfolios, crammed with every kind of document. These are letters or proposed decrees prepared by the different services of his department and awaiting the ministerial signature. If he does not choose to sign them blindly, he must spend long hours in looking into the different affairs. He then receives the chief officials of the ministry, who come to discuss the more delicate matters of current business. To acquit himself decently of a task so heavy and so varied, it is not enough to possess method; lacking a great aptitude for work and a rare promptness of judgment, he will be merely the plaything of parliament or the tool of his departmental bureaux."[1]

A minister's dual position.

In France, as in England, each minister occupies a dual position. He belongs to a council of ministers which deliberates on matters of general policy and endeavors to guide by its decisions the work of the legislative bodies. As such he attends all meetings of the ministry and takes part in its discussions. He also attends the sessions of the chamber in which he is a member, and goes to the other chamber whenever matters affecting his own department are under discussion. The constitutional laws provide that the ministers have the right to attend sessions of both chambers and to be heard when they request a hearing. Thus a minister who is a senator may speak also in the Chamber of Deputies, while a minister who is a deputy must be heard by the Senate if he so desires. And a minister who has no seat in either chamber may nevertheless be heard in both.

The undersecretaries.

Ministers attend the parliamentary sessions regularly, especially in the chambers to which they individually belong. They spend a good deal of their time either at the Luxembourg or at the Palais Bourbon when parliament is sitting. This means that it is impossible for them to give so much personal attention to their several executive departments as members of the American cabinet are expected to do. Consequently there has developed during recent years the practice of providing certain ministers with undersecretaries who virtually take full charge of some branch of departmental work. The duties of each undersecretary are prescribed by a presidential decree.

Their status.

Although the undersecretaries are not members of the ministry, they are regularly summoned to its meetings in order that they may give their advice on matters concerning which they have special knowledge. Therein they differ from the undersecretaries in Great Britain and the assistant secretaries in the United States who do not regularly attend the meetings of the cabinet.[1] In France, the undersecretaries are usually, but not always, members of parliament; but in any case they have the right to be heard in either chamber. They reply to any interpellations that may relate to their own work, and if the reply is not satisfactory they can be forced out of office by an adverse vote of the chamber. In this sense the undersecretaries are directly responsible to parliament, yet they are not permitted to countersign decrees of the president or to issue ministerial decrees over their own signatures. When a ministry goes out of office the undersecretaries go too, but all other administrative officials remain. This permanence of tenure among the administrative staff, in all its subordinate ranks, is of great consequence to the orderly conduct of business in France where ministries have changed so frequently that the whole fabric of administration would long since have broken down were it not for this permanence on the part of those who do the routine work.

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[1] Raymond Poincaré, *How France is Governed* (New York, 1913), pp. 198-199.

Meetings of the council of ministers.

The ministry holds two formal meetings a week, usually at nine in the morning. At these meetings, which are known as sessions of the council of ministers, the President of the Republic presides. But at sessions of the cabinet council the President of the Republic does not attend, and the prime minister (or, in his absence the minister of justice) takes the chair. The real business is done in these cabinet consultations; the policy of the ministry is there determined upon, and matters are put in form for final ratification at the more formal sessions. In neither case, however, are any official records kept; the proceedings are strictly secret as in England and in the United States. After each session of the council of ministers, however, the newspapers are given a brief summary in which, as one prime minister has said, "all mention of the graver questions is usually omitted."

The French prime minister is not the head of his ministry in the English sense. At the more formal meetings, as has been

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[1] At Washington, when a member of the cabinet is out of town, the senior assistant secretary in his department is sometimes present at meetings of the cabinet.

Position of French and English prime ministers compared.

said, he does not preside. In constructing his ministry, moreover, he must often coax the members in, and having done this he is in no position to treat them as subordinates. Individual members of his ministry are well aware of the fact that at a critical juncture they can oust their premier from office by merely tendering their resignations and rallying their co-partisans to vote against him in the chamber. Then they can become members of a new ministry, with some other prime minister at its head. So they sometimes assume a degree of independence which members of the English cabinet would never venture to display. Gambetta once tried to be a prime minister in the English sense, and to lord it over his colleagues, but the cry of "dictation" was set up, and the stormy petrel of French politics had to fold his wings.

What is meant by ministerial responsibility in France?

In France, as has been said, the ministers are jointly and individually responsible. But responsible to whom? "To the chambers," according to the wording of the constitutional laws and not, as is the English usage, to the lower house alone. In a general way, the French ministers hold themselves responsible to both chambers, inasmuch as they reply to interpellations in both. But whether the ministers are under obligation to resign when the Senate votes adversely on the reply to an interpellation—the answer to that question is not so easy. There is a difference of opinion among French legal authorities on this point, and the precedents are not conclusive. On more than one occasion the Senate has voted its want of confidence in ministers without forcing them to resign. On the other hand three ministries have been turned out of office by adverse votes of the Senate—the Bourgeois ministry in 1896, the Briand ministry in 1913, and the Herriot ministry in 1925. In 1923, moreover, the prime minister (Poincaré) went before the Senate on one occasion and demanded a vote of confidence, declaring that his ministry would resign if it were not forthcoming. He got his vote.

1. The legal provision.

2. The usage.

Now it is perfectly apparent that strict adhesion to the letter of the law would make the principle of ministerial responsibility altogether unworkable. The Senate and the Chamber of Deputies, being elected at different times and in different ways, are not always of the same political inclination. The Senate, in general, is the more conservative of the two chambers, which is what it was intended to be. Obviously a ministry cannot have the confidence of both conservatives and radicals at the same time. Usage has stepped in to solve the dilemma, for while the Senate has never conceded the exclusive right of the lower chamber to decide whether a ministry shall stay in office, it has tacitly permitted that principle to become operative under all ordinary conditions. So, despite the wording of the constitutional laws, it is in the Chamber of Deputies and not in the Senate that the fate of a ministry is ordinarily settled. One can fairly say that ministerial responsibility in France means responsibility to the lower House, much as it does in England. There is a degree of responsibility to the Senate, but it may fairly be called exceptional.

Individual responsibility of the French ministers.

Indeed, if we regard the usages alone, the responsibility of the French ministers to the Chamber of Deputies is even more direct and continuous than that of the British ministers to the House of Commons. This arises from the fact that the tradition of "ministerial solidarity" does not exist in France. The English tradition is that all ministers are in the same boat; they float or sink together. It is a case of each for all, and all for each. The opposition in the English House of Commons cannot attack one minister without rousing the entire ministry to his defence. But in France there is no such ironbound cohesion. When an individual minister incurs the wrath of the Chamber his colleagues are under no moral obligation to help him. It all depends on the politics of the situation. They will treat him as a Jonah and let him be cast overboard, if need be, rather than permit his presence to sink the whole ship.

The reason for it.

There is a reason for this. The constitutional law of 1875 provides that the ministers shall be responsible "both collectively and individually," and the French have assumed that these words mean what they say. How could there be any distinction between collective and individual responsibility if the principle of ministerial solidarity were maintained, as it is in England? So a French minister can be forced to resign while his colleagues remain in office.

Reconstructed ministries are more common than new ministries.

But even where a whole ministry is compelled to resign, this does not mean that an entirely new set of ministers will come into power. Very often it merely implies a ministerial reconstruction in the course of which some weak ministers will be dropped out and some stronger ones taken in. Weak and strong, when used in this connection, have nothing to do with the personal capacity of ministers. They are adjectives which refer to a minister's political following only. French ministries are much more often reconstructed than built anew. There have been relatively few ministries during the past fifty years which did not contain some members drawn from among the ministry which had just been overthrown. Even the outgoing prime minister has sometimes been given a portfolio in the new ministry, and occasionally has resumed his place at the head of it. Thus it is that the Chamber of Deputies may vote to overturn a ministry one day and within forty-eight hours give its confidence to a new ministry composed of almost the same individuals, perhaps with the same prime minister at their head. That, of course, could not happen in England.

This explains the statement as to "frequent changes in ministry."

All this ought to be borne in mind when one reads in English books the statement that "France has had more than fifty cabinets in fifty years." Construed in a literal sense this statement is misleading. It would be as fair to say that President Wilson had several cabinets because he made several shifts in the membership of his official circle. A change of ministry in France may be a mere shuffling of the cards. It does not usually lead to any important reversal of policy unless, as with the incoming of the Herriot ministry in 1924, the new ministry comes with a mandate from the country after a general election. In England, a cabinet which goes into office with a majority of the House of Commons behind it is rarely turned out by the House, no matter what it does. When an English cabinet falls it is usually (though not always) the result of a general election. In France the contrary is true. There it is the Chamber of Deputies, not the electorate, that ordinarily forces a ministry out of office. On only two occasions during the past fifty years has a French ministry been repudiated by the people at the polls. In all other instances the defeat has come at the hands of parliament. Or, to put it another way: in England the cabinet keeps its hand on the pulse of the country; in France on the pulse of the chamber. The task of the English ministry is much the easier, for while public opinion in a democracy may be "uncertain, coy, and hard to please," it is far less so than is the membership of a loosely-jointed bloc in the legislature.

A contrast with conditions in England.

There is another difference between the ministers in France

Another point of difference.

and in England. In both countries they perform executive and parliamentary functions, and supposedly give equal attention to each of these phases of their work. But as a matter of fact the executive duties of the English minister are on the whole deemed to be the more important, whereas in France his parliamentary functions appear to have the first call on his time and interest. A British minister who shows good administrative judgment and capacity is ordinarily safe in office so long as the cabinet stands; but in France a minister's security of tenure depends very largely upon his own individual adroitness as a parliamentarian and a politician. This point, of course, must not be pressed too far, for there are exceptions to it in both countries.

The French bureaucracy.

It was pointed out, a moment ago, that the routine work of French administration is carried on by subordinates of the various ministers. Most of those subordinate officials hold their positions under a permanent tenure; they do not go out of office when a ministry resigns. Together they constitute a vast administrative machine, a great bureaucracy which goes right on with its work, wholly unmindful of changes at the top. Ministers come and go, but neither their entry nor their exit makes much difference in the routine work of the departments. Even dynasties may change, but the bureaucracy neither dies nor surrenders. Paul Deschanel once said that "France is not a democracy but a bureaucracy." He was right in the sense that it is the corps of permanent officials who do the real work of governing. The ministers assume the responsibility, and ostensibly they determine the administrative policy; but if a French minister should attempt, during his all-too-brief term of office, to recast the traditional way of doing things in his department he would in all probability find himself tackling a bigger job than he bargained for. The minister who heads a bureaucracy is by no means its master.

The internal organization of a minister's department:

The French administrative system is well organized. Its keynote is concentration. Functions are devolved by the ministers upon chiefs of services, chiefs of bureaus, chiefs of sections, and so on, all forming a hierarchy of definite ranks and gradations. In each of the fourteen ministerial departments there is much the same division and subdivision of work. First of all, the minister has a group of confidential advisers who form his own "cabinet." The most important of this group, who is the minister's right-hand man, is known as the *chef du cabinet*, but there is also a deputy-chief, a secretary, and various attachés.[1] The relation between the minister and his little cabinet is both political and personal; its members hold no other positions; they come in with the minister and go out of office with him. No, to be more accurate, they do not always go out with him, for he frequently manages to procure them regular positions in the permanent civil service just before he goes.

1. The *chef du cabinet* and his associates.

The routine administrative functions of each ministry are divided into services (*directions*, they are called), and each service has its director. These *directeurs* are officials who have been recruited by promotion from lower positions. They correspond, in a way, to the assistant secretaries at Washington except that they do not resign when a new administration comes in. Each *direction* is again divided into several bureaus, and each bureau has its chief who is also a permanent official. The bureaus are the master cogs in the administrative machine. Without them the whole mechanism would soon cease to run. They are manned by a large corps of subordinate officials of various ranks and grades. Most of them are appointed to the lower grades in accordance with established civil service regulations and are then promoted on a basis of experience and merit. Some bureaus are sub-divided into sections, and these, again, into sub-sections; but we need not follow the classification any farther. It is enough to say that the whole organization takes the form of a pyramid, with the minister at the peak. All authority converges inward and upward. Taking France as a whole this great bureaucracy makes up an army half a million strong. This may seem to be a surprisingly large number in view of the fact that the United States, with three times the population, has only about 600,000 national officials and employees in all; but bear in mind that in France there are no state administrations. All the great administrative services are manned by officials of the national government.

2. The *directeurs* and the lower ranks.

France has no general civil service law but the essentials of a merit system, as we have it in the United States, are provided

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[1] The undersecretaries (see above, p. 423) are not assistant ministers. They do not form a regular rank in the administrative hierarchy. They are really ministers of the second grade, in charge of special services within the department.

The merit system of appointing officials.

by numerous "ordinances of public administration," issued by the ministry with the approval of the council of state. Appointments to the lower positions are based upon competitive examinations, and nearly all the higher posts, with the exception of the very highest, are filled by promotion. These promotions are made by each minister, within his own field, from an annual promotion list which is prepared by a committee of his subordinates. Seniority and merit are both taken into account, and sometimes (but not usually) both political influence and personal favoritism also have a part. Officials of all grades are protected against wrongful suspension or dismissal. They are ordinarily entitled to a fair trial before a "commission of discipline" on which there are fellow-officials of the same rank. The chief weakness in the system is the relative ease with which a minister can suspend some of the rules by his own decrees and make places for political friends, or even for his own relatives. Nepotism has been all too common in the public service of the Republic. Public opinion seems to resent it much less strongly than in England or in America. Nevertheless the French administrative service, in its various ranks and grades, has attained a fairly high standard. Capable young men are drawn into it in large numbers despite the low salaries paid, and most of them seem to find it an agreeable career. The social prestige which goes with an official position in France and the security of tenure count for much, especially with young Frenchmen who have some private income with which to supplement their salaries.

A word to the critics of the French governmental system.

There are those who find satisfaction in telling the world that parliamentary government has failed in France, that ministerial responsibility has become ministerial anarchy, and that the instability of her cabinets has made France a will-o'-the-wisp among the nations. All this has been so often repeated that a considerable part of the world believes it to be true. But the true test of a government is the way in which it satisfies the people who live under it. It was Aristotle, if my memory serves me right, who first remarked that the only properly-qualified judges of a repast are the partakers thereof. This dictum has been reiterated a great many times and in a great many versions since Aristotle's day, but there are still those who seem to think that the job is one for expert dietitians at a distance. It is quite true that France does things differently from England and America; but it does not follow that she necessarily does them worse. There is no general feeling among the French people that their system of parliamentary government has been a failure. Critics of the French system there are in France, to be sure, but they are certainly no more numerous or more vociferous than critics of the American scheme of government in America. Law and order are better maintained in France than in the United States; justice is more fairly and more efficiently administered; the work of administration is carried on more economically; there is no spoils system, no Tammany Hall, no gerrymandering, no pork barrel.

The council of state.

The ministry (or council of ministers) should be distinguished from the council of state. This latter body dates from the morrow of the Revolution and in its earlier days possessed large powers. Today its functions are only in small part legislative. All ordinances of public administration, as has been said, are submitted to the council of state before they are issued, this being done in order to make sure that the ordinances do not reach beyond the scope of the laws. Sometimes the council virtually re-drafts the ordinance, leaving the president little to do but to sign it. On the other hand the action of the council in such matters is never mandatory; the ministers must see that all ordinances are submitted to the council but they are not bound to do what it advises. The chief jurisdiction of the council, apart from advising on ordinances of public administration, is now concerned with administrative law, of which more will be said later on.[1] It is here that it renders its most notable service, protecting the citizen against arbitrary action on the part of the public authorities. The council is made up of thirty-five "councillors in ordinary service" or professional members appointed by the President of the Republic under certain statutory rules.[2] These councillors, by majority vote, render the council's decisions. In addition there are twenty-one "councillors in special service" who represent the various administrative departments and serve in an advisory capacity.

The council of state is in many ways a remarkable body.

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[1] *Below*, pp. 534-547.

[2] One of these rules is that at least half the councillors in active service must be persons who have served in designated administrative offices and have qualified themselves for higher appointment by competitive examination.

It combines advisory functions in the making of ordinances with final authority in the adjudication of administrative controversies. It is the supreme administrative court of the Republic. In addition it is a body of legal advisers and technical experts to which the government may turn at any time for counsel in the solution of its problems. As Barthélemy says, it personifies wisdom and experience in the science of administration. It helps to offset the shortcomings of democracy. The French people have a high respect for their council of state, and rightly so, for alike in personnel and deliberations it maintains a standard which few public bodies in any country are able to approach.

Léon Dupriez, *Les ministres dans les principaux pays d'Europe et d'Amérique* (2 vols., Paris, 1892-1894) is still a work of considerable value on the development and nature of ministerial responsibility, although it is badly out of date on some points. There is an admirable chapter on the French ministerial system in Adhémar Esmein's *Droit constitutionnel* (7th edition, 2 vols., Paris, 1921), vol. ii, pp. 208-273. Mention should also be made of Duguit's volumes (*above*, p. 414); R. Bonnard's *Précis élémentaire de droit public* (Paris, 1924); H. Noëll, *L'administration de la France* (Paris, 1911); and Joseph Barthélemy, *Le rôle du pouvoir executif dans les républics modernes* (Paris, 1910). A volume on *Le conseil d'état,* by R. Brugère (Paris, 1910) explains the organization and powers of that body.

CHAPTER XXIII

THE SENATE

The Senate, according to the constitution, is designed to be a deliberating, moderating, stabilizing influence. Its function is to impose at least a temporary check upon the exuberance of the deputies who are younger, more numerous, and reflect a more direct expression of universal suffrage.—*Joseph Barthélemy.*

The old tradition.

For more than two centuries preceding the eve of the great Revolution there was no parliament in France.[1] The monarch was the sole lawmaking authority, bound by no constitutional restrictions. But the revolutionary assembly changed this situation in 1789 by formally proclaiming that all legislative power resided in itself.[2] During the next three-quarters of a century, as has already been pointed out, the country had a series of new constitutions, some of which provided for a single chamber and some for a legislature of two branches. There was no fixed tradition, but in general the monarchists preferred the bicameral system, while the republicans felt that one chamber was enough. At any rate the Second Republic had a single chamber during its brief triennium of existence, and the Third Republic began its career in 1871 with one chamber also,—a national assembly it was called.

The existing Senate is the outcome of a conservative victory.

This national assembly, it will be remembered, was not only a legislative but a constituent body; its task was to govern the country and to frame a constitution at the same time. But it found the work of government much easier than that of making a constitution, chiefly because its members could not agree upon what general form the constitution ought to take. More particularly they were at odds on the question whether the constitution should provide for one house or for two. Without settling this question they could get no farther and for a long time they wrangled over it. The republicans wanted a single chamber; the anti-republicans insisted upon having both a Senate and a Chamber of Deputies. In the end the anti-republicans had their way. On February 24, 1875, the national assembly settled the matter by adopting the first of its three fundamental laws, a law which related to the organization of the Senate. "The constitution of France," it has been said, "is first of all a Senate,"—which is both chronologically and literally true.

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[1] There were *parlements*, of course, such as the Parlement de Paris, but these were not parliaments in the customary sense. They were not lawmaking bodies. Their chief function was to enregister royal decrees and to serve as courts in certain important cases.

[2] Decrees of October 3-5, 1789.

The actuating motives of the conservatives.

The establishment of an upper chamber was a necessary concession to the conservatives who dominated the national assembly and who felt that a single elective house might rush the country into an orgy of radicalism. They were influenced by exactly the same motives which swayed the framers of the American constitution in 1787. It is a significant fact that conservatives in all ages and in all countries have been partial to second chambers. And for good reason, inasmuch as history demonstrates that second chambers are generally favorable to vested interests. But the makers of the French constitution were also influenced by the fact that the bicameral system had been adopted by every other country. The example of the United States was repeatedly alluded to, and it carried considerable weight because the American Senate at this time was proving itself to be an effective agency for restraining not only the lower house but the President as well. It had recently given considerable pleasure to French public opinion by refusing to ratify a treaty for the annexation of Santo Domingo which President Grant submitted to it in 1870.

The problem of organizing the Senate.

But having agreed upon the principle of a bicameral parliament there was still the problem of determining how the members of the upper chamber should be chosen, and this problem gave the national assembly a great deal of trouble. It was taken for granted, of course, that the Chamber of Deputies would be constituted on a basis of manhood suffrage. It was also assumed that the Senate would have to be constituted on a somewhat different basis, otherwise it would not serve the purpose which the conservatives had in mind. How to devise a Senate that would function as a restraining agency and yet not be too much of a restraint—that was the problem. France had a nobility in

1875, but it was a motley affair, composed of frayed-out families whose lineage went back to the age of the Bourbons, and of sycophants who owed their ennoblement to the favoritism of the Bonapartes. It was without prestige among the people. And in any event a House of Peers did not seem to comport with the forms or spirit of republicanism. On the other hand, the American plan of having senators chosen by the states could not be adopted because there were no constituent states in France. Some new method of organizing the second chamber had to be found. The conservatives desired a Senate appointed for life. The radicals did not want a Senate at all, but insisted that if France must have such an institution the senators ought to be elected by the people.

How it was finally settled.

In the end it was decided that the Senate should be composed of 75 members appointed by the national assembly for life and 225 members chosen for nine-year terms by electoral colleges in the several departments or administrative divisions of the Republic. The life membership provision was designed to supply the Senate with a strong conservative infusion, for these life members were to be named by the national assembly itself. This body, it will be remembered, contained a majority of monarchists, imperialists, and other reactionaries. It was their intention to throw a solid block of seventy-five monarchists into the Senate at the outset and thus to make sure that it would stay friendly for many years. But their plan did not work out as they expected. By reason of jealousy and dissensions among the monarchists it proved possible for the republicans to elect more than half the original seventy-five life members from their own ranks. Public opinion throughout France, moreover, soon came to regard appointive life-tenure as an anachronism, and within ten years this feature of the constitution was repealed (1884). Those senators who had been appointed for life were allowed to serve out their days, but as they died or resigned their places were filled by the same process as the elective senators. The last of the life senators passed off the stage a few years ago.

Present composition of the Senate.

Today, therefore, the French Senate is composed of three hundred and fourteen elective members.[1] The senators, who serve for nine years, are chosen to represent the eighty-nine departments of France, the three departments of Algeria, and the various French colonies. Each department has from one to ten senators; the colonies have four senators among them.[1] One-third of the senators retire triennially. The selection is made by an electoral college which is convoked every three years in each department. This electoral college is made up of four elements (a) the members of the Chamber of Deputies who represent the department, (b) the members of the general council of the department, (c) the members of the various arrondissement councils within the department, and (d) delegates chosen by the municipal councils of all the communes (cities, towns and villages) within the department.[2] As there are more than 36,000 communes in France their delegates far outnumber all the other members of the electoral colleges and can always control the election of senators. It is for this reason that the Senate is often called "the great council of the communes."[3]

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[1] Fourteen senators were added in 1919 to represent the three departments of Alsace-Lorraine (Upper Rhine, Lower Rhine, and Moselle).

The original provision was that each commune, no matter what its size, should have one delegate. But in 1884 it was provided that the communes should send from one to thirty delegates according to the size of their municipal councils. The delegates are in each case chosen by the council. When there is one delegate only, the mayor of the commune is practically always named; when there are several delegates the mayor and various councillors are selected by their fellow members. But the various communes are by no means represented in proportion to the number of their inhabitants. In the electoral college of the department of Bouches-du-Rhône, for example, the great city of Marseilles with half a million inhabitants is represented by twenty-four delegates; but various neighboring villages, with a total population of less than 30,000, are also represented by twenty-four electors. This is because no city with the exception of Paris is permitted to have more than twenty-four representatives in an electoral college while every village, however small, is entitled to at least one delegate.

The procedure in choosing French senators.

When the time for choosing senators arrives, an electoral college is summoned to meet at the chief town of each department. Any French citizen, forty years of age, is eligible to be elected a senator, provided he is not a member of any royal or imperial family that has ever ruled in France. There are no formal nominations; each member writes his own ballot. The contest is conducted on straight party lines—as straight as party lines in France ever are. On the first ballot a clear majority of all the delegates is necessary to elect, and the same is true of the second ballot. But if the department's full quota of senators is not elected in this way on the first two ballots, a third ballot is taken, and on this ballot a plurality is sufficient. At the senatorial election of 1924 about three-fourths of the places were filled on the first ballot.[1] In many of the departments there is an understanding that senatorships shall be distributed geographically, each arrondissement getting its share when there are two or more senators, and its turn when there is only one. For this reason many capable senators have been denied re-election. Frenchmen sometimes say that geography, to a far greater extent than personal merit or political experience, determines the choice of individual senators. A candidate may offer himself for election in more than one department, and these multiple candidates were at one time common. But they have gradually become less so. It is now rather unusual for anyone to be elected unless he lives in the department.

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[1] See *below*, p. 581.

[2] For an explanation of these general councils, arrondissement councils, and municipal councils, see below, pp. 559, 562-563.

[3] The origin of this saying is attributed to Gambetta.

An American analogy.

The work of the electoral colleges in France reminds one of the nominating conventions in America; there is the same attempt on the part of the political leaders to manipulate the proceedings in advance, the same manœuvering and forming of combinations, and the same frequent triumph of dark horses over strong men. There is the same lavish outpouring of promises, and usually the same rumors of corruption float through the air. The electoral colleges are sometimes very large bodies; that of the department of the Seine has over a thousand members.

Character of the senatorial candidates.

It is unusual for anyone to be a candidate for the Senate until after he has made himself well known throughout the department by holding other offices. Most of the candidates are lawyers, journalists, or rural landowners who have served in the Chamber of Deputies. They esteem it a promotion to go to the Senate although the latter is the less important of the two chambers in point of powers. They are attracted, no doubt, by the greater prestige which attaches to the senatorships and by the longer term which election to the Senate assures. At any rate there is a periodical migration of deputies to the other chamber, much to the advantage of the latter. A term in the Senate often marks the end of a public career, although there are frequent exceptions to this rule. Occasionally, too, a senator has been promoted to the presidency. There have been four such cases—Loubet, Fallières, Poincaré, and Doumergue.

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[1] There were 116 places to be filled, and 85 senators were elected on the first ballot. Ten were chosen on the second, and twenty-one on the third. The next senatorial election will be held in 1927.

Their party affiliations.

Among the political parties in the Senate the extremists at both ends, extreme conservatives (*groupe de la droite*) and extreme radicals (*groupe du parti communiste*) are numerically weak, because there are very few departments in which either of these parties can control a majority of the votes in the electoral college. Likewise the smaller factions among the more moderate groups find difficulty in securing the election of senators from their own ranks. The senators come largely from the parties of the Republican Left or from the Democratic Left, as the French call them, the latter being Socialists of a relatively moderate stripe. In any case partisanship is less pronounced in the Senate than in the Chamber of Deputies, and party leadership is even less generally followed.

General character of the Senate.

The Senate has not been so conservative a chamber as its architects intended, but otherwise it has justified the expectation that it would be composed of more mature, more experienced, and more distinguished statesmen than the Chamber of Deputies. It is the organ of the governing classes, for in spite of the progress which democracy has made in France the governing classes still maintain their grip, especially in the rural areas. Public opinion is still inspired and guided in the Republic by men who hold office, who own land or securities, who possess education, and who have some social standing. These various classes control the electoral colleges, and they choose senators from their own ranks. Age and experience, moreover, lend sobriety to opinion. The average age of the senators is between sixty-three and sixty-five. Men who have reached that age are no longer under the illusion that mankind can be regenerated by enacting a few more laws. The very fact that the senators are "elder statesmen" tends to make them conservative.

Its personnel.

In the general quality of its membership the French Senate sets a high standard. President Lowell, a quarter of a century ago, expressed the opinion that it contained as impressive a body of men as could be found in any legislative body the world over. It has not noticeably declined since that time. Lord Bryce, writing in 1921, declared that no other legislative body has in modern times shown a higher average standard of ability and knowledge among its members. Nor is its average likely to decline so long as a transfer from the Chamber to the Senate is regarded as a promotion. Because of its dignity, its orderly methods, and its insistence upon a full discussion of all important measures the Senate is looked upon by many students of comparative government as a model of what a second chamber ought to be. Yet Frenchmen are not wholly satisfied with it. They protest that the system of indirect election is clumsy and results in the gross over-representation of small towns and of rural districts. One hears exactly the same complaint regarding "government by yokels" that is so frequently put forth by critics of the various state senates in the United States. Many Frenchmen believe, moreover, that the nine-year term is too long, especially since the senators are chosen by delegates who may themselves be three or four years away from the people. It is possible for a senator, in the closing year of his term, to be twelve years distant from the action of the voters.

Proposals for its reform.

Many projects for reforming the French Senate have been put forward during the past forty years, but no tangible result has come from any of them. The Senate does not want to be reformed, and there is no way of reforming it against its own will. No change can be made in the organic law of 1884 without its assent. And in any case it is far easier to pick flaws in its present organization than to procure any agreement upon a substitute. If the critics of the Senate could unite on a definite plan of reform there would be some hope of its ultimate adoption, for a second chamber will always bend to the will of the nation when that will is clearly made manifest. Both the House of Lords and the Senate of the United States have done this during the past fifteen years. But in France the proponents of senatorial reform have not been able to get together upon any single plan of reorganization.

The Senate's meeting place.

The Senate and the Chamber of Deputies ordinarily meet at the same time, and their sessions come to an end simultaneously. The Chamber is never called into session alone; but the Senate may be summoned in special session by itself for the purpose of hearing an impeachment. In Great Britain and the United States the two legislative chambers meet under the same roof; but this is not the practice in France. The French Senate holds its sessions in the Luxembourg Palace, a structure which is redolent of Napoleonic memories.[1] It has many magnificent rooms and corridors, richly decorated with tapestries and with carvings in wood. The Senate chamber is in the form of an amphitheatre, with eight rows of arm chairs, upholstered in red velvet, rising tier on tier. Directly in front of them is the tribune from which the senators (or the ministers when they are present) make their speeches. Behind the tribune sits the president of the Senate, with various officials on either hand, while grouped around them are splendid marble statues of the great chancellors who laid down the law in olden days,—Turgot, D'Aguesseau, Colbert, and the rest. On the lawmakers of a modern republic these faces of stone look down.

Its presiding officer.

The Senate elects its own president, and this official ranks next to the President of the Republic among the officials of state. He has the usual powers of a presiding officer, including disciplinary powers; but these he has no occasion to use, for the Senate is an exceedingly well-behaved body. Its decorum is almost oppressive. Instead of a gavel the president uses a bell which tinkles melodiously at each stage in the advance of business. The Senate also elects, from among its own members, a vice-president and a bureau or committee of management which performs various functions with reference to the order of business. The debates are rather languid and have none of the vivacity that marks the discussions in the lower House. The newspapers pay relatively little attention to them. Nevertheless the speeches are good, both in substance and in form, as any outsider who listens to them will readily testify. The senators are paid for their services and have the usual immunities of legislators,—freedom from arrest and freedom of speech—subject to the customary limitations.

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[1] This mansion, which is situated in the Rue de Vaugirard, at the end of the Rue de Tournon, was built during the early years of the seventeenth century for Marie de Medicis, and was considerably remodelled by Napoleon I. During the period of the Red Terror it was used as a prison. It served as a legislative chamber during the First and Second Empires. The Senate of the Third Republic has used it since 1879.

General powers of the Senate: (a) as originally intended.

It was the intention of those who framed the French constitutional laws that the Senate should be at least co-equal with the Chamber of Deputies in legislative power and influence. The conservatives in the national assembly cherished the hope, in fact, that the Senate would be the more powerful of the two chambers. And so far as the express provisions of the constitution go, there is no reason why it should not be, for the constitution makes the ministers responsible to both chambers. It gives the Senate an equal share with the Chamber of Deputies in the making of all laws, with the single exception of money bills which must originate in the lower House. And it gives the Senate two special powers which in 1875 were deemed to be of great importance, namely, the power to serve as a high court of impeachment, and the power to join with the President of the Republic in ordering a dissolution of the Chamber of Deputies. The French constitution does not, however, give the Senate any special authority in relation to treaties and presidential appointments similar to that possessed by the Senate of the United States.

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(b) as they have actually worked out.

But the expectations of those who planned the powers of the French Senate have not been fulfilled. It has become distinctly the less influential of the two chambers. This is partly because all previous upper chambers in France had occupied a subordinate position, and a tradition of inferiority had thus become established. It is also because the Chamber of Deputies, with its members chosen for short terms by direct manhood suffrage, is assumed to be more truly representative of the French people and has tacitly arrogated powers on that assumption. It has taken control of the ministry and control of the budget, although the constitution does not give it full control of either. The Chamber of Deputies has merely gathered them under its wing as a matter of course, just as the Supreme Court in the United States has taken to itself the right to declare the unconstitutionality of laws. All of which merely supplies another illustration of the axiom that the wording of a constitution affords no clue to the facts of government. The subordinate position of the French Senate is the outcome of usage and not of law.

The Senate's special prerogatives: 1. Consenting to a dissolution of the Chamber.

What are the powers which the French Senate now exercises? Let us begin with its special prerogatives. The right to join with the President of the Republic in dissolving the Chamber of Deputies is the first of these. It is a unique function of an upper chamber. In Great Britain the House of Commons may be dissolved at any time by the crown on the advice of the cabinet; in the United States the House of Representatives may not be dissolved by anyone under any circumstances. But the French constitution expressly stipulates that the President of the Republic may dissolve the Chamber if the Senate concurs. This was thought by the framers of the constitution to be a power of supreme importance. Among other merits it was believed to be useful as a safeguard against a possible coup d'état by some ambitious chief of state.

Why this prerogative is of no importance.

But the Senate's joint authority in dissolutions has turned out to be a prerogative of very little consequence. The reason for this is easy to explain and it suggests that the makers of the French constitution did not clearly envisage the actual workings of the government which they were setting up. They provided that every official act of the president must be countersigned by a responsible minister. That meant, of course, that a decree dissolving the Chamber of Deputies, like any other presidential decree, would have to be so countersigned. In other words it is the ministers, not the president, who must take the responsibility of asking the Senate to concur in a proposal of dissolution. But it stands to reason that no ministry will ever propose a dissolution of the lower chamber so long as it has the support of that body. So, what the framers of the constitution really did was to give the ministry, with the concurrence of the Senate, an opportunity to wreck any Chamber of Deputies that proved intractable. If actually put into operation, that idea would be intolerable. It would lead to dissolutions and general elections every few months, because ministries are rarely able to hold the Chamber of Deputies in leash very long. Usage has therefore decreed that it shall not be put into practice. Only once in fifty years has the Chamber of Deputies been dissolved before the expiry of its four-year term, and the outcome in that case was not such as to encourage any repetition of the experiment.[1]

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[1] See *above*, p. 409.

2. Serving as a court of impeachment.

The second special prerogative of the Senate is that of serving as a "high court of justice for the trial of the President of the Republic, or the ministers, or to take cognizance of assaults on the security of the state." According to the constitution the president may be impeached for high treason only, but a member of the ministry may be hailed before the Senate for any offense committed in the exercise of his official functions.[1] For assaults on the security of the state the Senate may try any person whatsoever, whether he be a public official or not. In such cases a presidential decree convokes the Senate into session as a high court of justice. The first step in an impeachment is taken by the Chamber of Deputies which frames the charges. In the case of assaults upon the security of the state, the accusation is not made by this chamber but by the ministry. On three important occasions within the last fifty years the ministry has brought such accusations against men of prominence in French public life, the most notable recent instance being that of Joseph Caillaux in 1920.[2] A bare majority in the French Senate is sufficient to convict, whereas in the Senate of the United States a two-thirds majority is required.

The Senate's share in lawmaking:

1. Money bills.

So much for the Senate's special and exclusive powers. It has been mentioned that the lawmaking authority of the French Senate is ostensibly co-equal with that of the Chamber of Deputies save in one respect, namely, that money bills must be first presented to the lower House, and passed by it before going to the Senate. Whether the Senate may amend such bills by increasing or decreasing the items at its discretion the constitution does not say. It simply provides that "money bills shall be first introduced in, and passed by, the Chamber of Deputies." But here again usage has made the fundamental laws articulate. The matter was for a time in doubt and gave rise to repeated controversies between the two chambers, but in the end the Chamber of Deputies triumphed and its right to have the final word on all money matters is now virtually conceded. The Senate, however, continues to offer amendments when money bills come before it.[1] If the deputies agree to such amendments when the measure goes back to them, well and good. But if they do not agree, the Senate gives way. This, as a prominent senator once explained, is a "matter of expediency, not of law." But whether it be a matter of willingness or compulsion the effect is all the same. The Chamber of Deputies in France, like the House of Commons in Great Britain, has virtually an absolute control of the national purse.

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[1] For offences committed outside the range of his official functions a minister may be brought before the ordinary criminal courts.

[2] Caillaux, a former prime minister, was accused of intrigues with the Germans during the war. He was convicted and sentenced to three years' imprisonment in addition to the loss of all political rights for ten years. But in 1924 his civil rights were restored to him by legislative enactment and in 1925 he became minister of finance in the Painlevé cabinet.

An American contrast.

Strangely enough the House of Representatives in the United States does not have this financial supremacy although such was the avowed design of the men who framed the constitution.[2] They intended that the lower branch of Congress should be the dominant factor in public finance. James Madison, indeed, predicted that the provision which confers on the House of Representatives the sole right to originate bills for raising revenue would unquestionably make it so. But Madison proved to be a false prophet. The Senate of the United States has developed greater influence than the House, not only in matters of general legislation but in the making of the tax laws. By the terms of the constitution it cannot originate bills for raising revenue, and by usage it cannot originate bills for the spending of money; but when a bill of either sort comes up from the House it can strike out everything except the preamble and substitute what is practically a new measure of its own. The Senate of France has acquired no such authority. Its power in relation to money measures, while not so negligible as that of the House of Lords in England, is pretty nearly so.

2. Other bills.

On all measures other than money bills the equal authority of the French Senate has never been seriously questioned. Such bills may be originated in the Senate, but most of them are, as a matter of fact, brought first before the Chamber of Deputies. If they pass this chamber they go to the Senate where they may be rejected or amended at will. When the two chambers disagree on amendments the bill is not sent at once to a conference committee as is the practice in Congress. It merely travels back and forth from one House to the other. Meanwhile the leaders of the two chambers informally confer and try to reach a meeting of minds. Sometimes each House appoints a committee to help effect a compromise, and these committees may confer, but they do not vote jointly on any question. If the measure is one that has been sponsored by the ministers, it is their concern to find a solution of the deadlock. But if the Senate decides to stand its ground, which it has a perfect right to do, the measure fails to become a law. A good many measures have perished in this way.

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[1] It cannot, however, insert new items; it can increase items only upon the proposal of a minister; of its own initiative it can merely decrease or strike out items already in the bill.

[2] "All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills." Article I, Section 7, Paragraph 1.

The Senate's methods of resistance.

"The function of the Senate is to resist," says Barthélemy, "and in its own way it fulfils this function." But rarely does it carry its resistance to the point of open rupture. It prefers to interpose the barrier of inertia. Hence, when some measure has been hurried through the Chamber of Deputies without adequate discussion, the Senate merely refers it to a committee and there it stays until public opinion can be sounded. Other problems then engage the interest of the deputies, and the measures which repose in the files of Senate committees are sometimes forgotten. In any event the original ardor of the deputies has time to cool down, and compromise then becomes more easy.

How it checkmates the practice of "tacking."

The Chamber of Deputies, on some occasions, has taken a money bill, and tacked some non-financial measure to it in order that the Senate might be debarred from rejecting the latter. But this parliamentary manœuver has not usually availed. The Senate merely separates the irrelevant measure from the main bill and sends it to a committee for study. It does this at times with proposals of fiscal reform which are included in the budget—taking the ground that the budget must be passed speedily but that the reforms can wait. There is no way in which the Chamber of Deputies can force the Senate to expedite the work of its committees, and these dilatory tactics sometimes place the ministers in an awkward position. The Chamber of Deputies may insist that the ministers bend their efforts towards securing the Senate's approval of a measure, yet the ministers are well aware that their pressure may do more harm than good. For the Senate is very jealous of its independence and is sure to resent any open attempt at forcing its hand. The senators are seasoned parliamentarians; many of them have been members of the Chamber and understand its moods. They know when to stand firm and when to give way. They know, indeed, that the Chamber sometimes passes demagogic bills with the full expectation that the Senate will throttle them.

Its attitude on taxation.

In general the Senate has been hostile to new forms of taxation. For years it stood out against the imposition of an income tax. It has resisted proposals which aim to put the bulk of the tax burden upon the rich—by heavy inheritance taxes, for example. It has usually delayed all such measures or tried to whittle down the rates. In 1925 it promptly rebuffed the Herriot ministry when the latter came forward with proposals for what was virtually a "capital levy." As one writer puts it, the Senate has displayed an "undisguised antagonism to systems of taxation with democratic tendencies." It cannot increase the rates of taxation proposed by the Chamber, and does not want to do so; but it can reduce them, and often succeeds in doing this.

Its aversion to socialism.

The French Senate has also been hostile to proposals of government ownership. It has been against state socialism, although there is a large Socialist element among its members. It was only with the utmost reluctance that it accepted a measure for the public acquisition of one of the French railroads,—*les chemins de fer de l'Ouest*. It has delayed all manner of bills relating to additional holidays for public employees, pensions for workers, the improvement of election procedure, and social welfare work. For some of these delays, however, the Chamber of Deputies was in part responsible inasmuch as the bills sent up by it were badly drawn.

What the French people think of it.

The extremists of the Left denounce the Senate as a reactionary body, hostile to the interests of the masses. They demand its abolition. But the other parties do not feel that way. They realize that it plays a very useful part in lawmaking, even if it does incur unpopularity at times. They have not forgotten, moreover, that the Senate on one occasion saved the Republic—in 1888, when Boulanger tried to stampede the ministers into dissolving the Chamber. The Senate let it be known that it would refuse concurrence. Instead it presently put Boulanger on trial and found him guilty of treason.[1]

Nearer than any other European legislative body, in short, the Senate of France approaches the ideal of what a second chamber ought to be. The prime purpose of an upper chamber is to serve as a brake, but not too tight a brake, upon the process of legislation. It should serve as a counterpoise to the haste and volatility of the popular chamber. It should scrutinize, revise,—and delay when necessary. It should interpose obstacles, but not insuperable barriers, to the expressed will of the lower House. To this end a second chamber should be constituted differently, but not too differently, from the other branch of the lawmaking body. The difference must not be so great that strong currents of public sentiment will affect one House and leave the other unaffected. An ideal second chamber should bend very slowly to the gusts of public opinion, but it should never fail to bend when the wind sets definitely in a given direction. For if it does not bend it is apt to break—as the House of Lords discovered in 1911. Judged by this test the French Senate makes a good showing. It has been a stabilizing factor in a country where political instability has become proverbial. It has provided the Third Republic with a good balance wheel.

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[1] For the history of the Boulanger agitation, see *below*, pp. 493-494.

A measurable approach to the ideal among second chambers.

A good survey of the Senate's work may be found in A. Esmein's *Droit constitutionnel* (7th edition, 2 vols., Paris, 1921), vol. ii. pp. 333-478. Attention may also be called to Joseph Barthélemy's *Le gouvernement de la France* (Paris, 1919), ch. v. There is an English translation by J. B. Morris (New York, 1924). The same author's volume on *Les résistances du Sénat* (Paris, 1913) is interesting. See also Professor E. M. Sait's, *Government and Politics of France* (New York, 1920), ch. v.

CHAPTER XXIV

THE CHAMBER OF DEPUTIES

> Every large body of men, not under strict military discipline, has lurking in it the traits of a mob, and is liable to occasional outbreaks when the spirit of disorder becomes epidemic; but the French Chamber of Deputies is especially tumultuous.—*A. Lawrence Lowell.*

Why the constitutional laws do not deal with the Chamber.

In the constitutional laws of 1875 there is a great deal about the composition and powers of the Senate, but scarcely a word concerning the Chamber of Deputies. Save for the provision that its members shall be elected by "universal suffrage" the organization of the Chamber was left to be determined by ordinary legislation.[1] There were two reasons for this action. In the first place no difference of opinion existed in the national assembly as to how the Chamber should be organized, nor indeed was there any difference of opinion on this matter in the minds of the French people. Everybody assumed that the lower branch of the legislature would be made up of members directly elected by the whole people. That being the case it did not seem to matter very much whether the election took place under one form of procedure or another. In the second place, it was felt that much might be gained by leaving the organization of the Chamber flexible. The size of its membership, the term of service, the procedure in elections, and the rules of the Chamber—these were matters which might well need to be altered to meet new conditions from time to time. Before it dissolved, however, the national assembly adopted an organic law (November 30, 1875) in which the method of electing deputies was definitely prescribed. The provisions of this organic law have been altered by statute on a half-dozen occasions since 1875.[2]

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[1] The term "universal suffrage" has been interpreted in France to mean manhood suffrage. This meaning of the term differs, of course, from that given to it in Great Britain and the United States.

[2] The most notable of these amending statutes is the Law of July 12, 1919, which introduced proportional representation.

The method of electing deputies.

As at present constituted, the Chamber of Deputies consists of 584 members.[1] It is, therefore, the second largest elective chamber in the world. The deputies are chosen for a four-year term on a basis of manhood suffrage. The right to vote extends to every male citizen of France, twenty-one years of age or over, who has been duly enrolled on the voters' list of any commune.[2] Persons in the active military or naval service and those who have been deprived of civil rights by judicial decree are excluded. There are no educational tests for voting in France as in some of the American states, and no taxpaying requirements. Women are still excluded from voting in all French elections although an attempt was made in 1919 to give them suffrage rights. The Chamber of Deputies, in that year, passed by a large majority a bill to abolish the sex qualification, but the Senate by an equally decisive vote rejected the proposal. And, strange to say, it was not the conservatives alone, but the radicals who encompassed the defeat of the measure. For the Left bloc is well aware that the women of France are friendly to the Catholic Church and would support no policy of extreme anti-clericalism such as the radicals desire. So democracy, as one very keen-witted Frenchman has ironically remarked, "must be protected against itself, for what good would democratic principles be if there were no genuine friends of the people to apply them—and to profit thereby?" It reminds one of the legendary Ugolino who devoured his own children so that they would never be fatherless. Anyhow the country did not become worked up over the matter. It did not show much enthusiasm when the Chamber acted favorably, or much disappointment when the Senate acted adversely. Both Houses did exactly what everybody expected them to do. Woman suffrage is not a live issue in France although it is likely to become so at no distant date. All in all the suffrage rules are pretty simple. There is no plural voting, no absent voting, no compulsory voting.[3]

The suffrage.

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[1] Of these 10 are allotted to the various French colonies, 10 to Algeria, 26 to Alsace-Lorraine, and the rest to France as she was before the war.

[2] To be enrolled in a commune it is necessary to possess a "true domicil" there, or to have been a resident for at least six months prior to the compilation of the voters' list. The laws make a distinction between domicil and residence. It is possible for a citizen to reside in one commune while retaining his "true domicil" somewhere else—usually in the commune of his birth.

[3] If, however, a voter has a residence in more than a single commune he may make his own choice as to where he will be registered, but in no case

How voters' lists are compiled.

Although the qualifications for voting are fixed by general law and hence are the same at all French elections—national, departmental and local—the work of compiling the voters' lists is entrusted to the local authorities. In each commune the responsibility for preparing the *liste electorale* rests with a commission of three persons, namely, the mayor, a representative of the municipal council, and an official named by the prefect of the department in which the commune is situated. This commission first revises the old register by using information which is on file at the mairie or city hall.[1] Then the revised list is posted and if there are any wrongful omissions or inclusions, the interested parties may file protests. Such protests are considered by the electoral commission whose membership is enlarged for this purpose by adding two additional representatives of the municipal council. And if the decisions of this enlarged commission do not satisfy, there is an appeal to the administrative courts.[2]

Apart from errors or oversight the names of voters are placed upon the list without any action on their own part. There is nothing corresponding to the English method of sending canvassers from house to house gathering the names of voters, or the American plan of calling the voters every year to a registration office. There is no occasion to use either of these methods because all the essential information is on file in the office of the mayor. The records of the *état civil,* which are scrupulously kept up to date, contain the names of all who have moved into the commune during the year, or out of it. They contain full data concerning inhabitants who have died, or who have come of age, or who have lost their civil rights since the list was last revised. Owing to the accuracy of these records there are relatively few wrongful omissions or inclusions to be found when the list is posted.

The election districts.

France has tried, since 1875, three different methods of electing deputies. During the first ten years the elections were based upon single-member districts, as in England and the United

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may he be registered in more than one commune. For example, if a voter has a winter home in Paris and a summer place at Deauville, he may be registered in either of these municipalities.

[1] A perpetual census (*état civil*) is maintained in every commune as a basis for the *état militaire* or roster of compulsory military service.

[2] The work of preparing the list begins on January 15 in each year and must be completed by March 31. The elections are held early in May.

States. But this plan, to which the French gave the name *scrutin uninominal* or *scrutin d'arrondissement*, was deemed unsatisfactory because it seemed to concentrate the attention of each deputy upon the interests of his own district rather than upon those of France as a whole. The districts were small, and it is an axiom of government in all countries that small districts elect small men. As Gambetta once said, it made the Chamber of Deputies "a broken mirror in which France could not recognize her own reflection." So a plan of election by general ticket, or *scrutin de liste*, was adopted in 1885. Under this system all the voters of each department (a department is the largest administrative district in France) chose four, or six, or ten deputies according to its population. But the plan of election-at-large also failed to satisfy either the people or the politicians. It was expected that the enlargement of the constituencies would raise the quality of the candidates and lessen the power of the local cliques; but it showed no signs of doing either. Moreover, it was utilized by the Boulangists to further their cause, and with such success that both chambers became much alarmed. In 1889, therefore, the old method of election by single-member districts was restored.

The older plans.

The movement for proportional representation.

Once more there was widespread grumbling. It was alleged that the ministers and the prefects, by the free use of patronage, were able to control the elections in many of the smaller districts. As the districts, moreover, were usually identical in size with the arrondissements there was great inequality among them; some had twice as many voters as others. Finally there was the very serious objection that deputies elected by the district system did not usually represent a majority of the voters in their districts. This arose from the fact that there were several political parties and hence several candidates in the field. The law stipulated that no candidate should be deemed elected unless he obtained a clear majority of the votes cast, but it also provided that if no one secured a majority there should be a second election, a fortnight later, and at this election a plurality would suffice. The result was that a great many deputies were chosen by a minority of the voters in their respective districts or, in numerous instances, owed their elections to the formation of blocs among voters belonging to the weaker political parties. But the Chamber and the Senate found themselves unable to agree upon anything better and the old plan continued in operation until 1919 when it was replaced by the present system, which may be called a scheme of imperfect proportional representation.

A half-caste proportional system.

It is imperfect because it is the result of a compromise. The Chamber of Deputies desired an out-and-out proportional system, one that would give each of the political parties a representation exactly proportioned to its strength at the polls. The Senate, on the other hand, preferred a return to the system of *scrutin de liste*. In the end the two chambers reached an agreement on the present system which is neither the one thing nor the other. The proportional feature, as will presently be explained, does not come into operation unless the strongest party fails to secure an absolute majority for its ticket.

Today the department once more serves as the election district. Each department is allotted one deputy for every 75,000 inhabitants of French nationality; but it is provided that no department, however small its population, shall elect fewer than three.[1] Candidates may be nominated either singly or in groups, but no group may contain more names than there are deputies to be elected. Any voter, twenty-five years of age or over, is eligible. He does not need to be a resident of the department in which he is nominated. Neither by law nor by custom is it required that a deputy shall be a local man. But no one may be a candidate in more than one department. Government officials may offer themselves as candidates, but if elected must resign their administrative offices within eight days or lose their seats. To this rule, however, there are various exceptions, including ministers, undersecretaries, and various judicial officers.

How candidates are nominated.

The nomination procedure is very simple. Each group of candidates is merely required to file with the prefect (not later than five days before the election) a nomination paper, and each independent candidate a petition, bearing the signatures of at least one hundred qualified voters. In neither case is it necessary to deposit any sum of money, as in England. The names of the candidates thus nominated are printed on official ballots prepared under the prefect's direction. The names are printed on the ballots either singly or in "lists" according as they appear on the nomination papers, and each voter may mark as many crosses as there are seats to be filled. He may, accordingly, vote for a single group or list, or he may vote for some names in one list and some in another, or he may vote for a candidate who has been nominated independently.[1] As a matter of practice, however, a group or list of candidates is nominated in every department by each of the various political parties, and most of the voters vote solidly for the list of the party to which they belong. In other words they vote for parties and not for candidates.

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[1] A major fraction of 75,000 entitles a department to an additional representative. Thus a department having 340,000 population would be entitled to elect five deputies. It is provided in the electoral law that those departments which are entitled to more than six deputies shall eventually be divided into districts, each of which will elect from three to six members of the Chamber.

The election.

The election takes place on a date fixed by presidential decree, but it must come within sixty days preceding the expiry of the four years for which the Chamber was elected. It always takes place on a Sunday. This is in keeping with the égalitarian principle, it being assumed that Sunday is the most convenient voting-day for everyone, wage-earner and gentleman of leisure alike. The polling places are designated by the prefect; they are usually located in public buildings such as the town hall and the school houses. It has long been the custom of the election authorities to send each voter, either through the mails or by personal delivery, a notice stating the date and the place of the polling.

Old and new forms of ballot.

Prior to 1919 each political party printed its own ballot or straight ticket of candidates, just as was the practice in the United States before the Australian ballot came into use. Then, when the voter approached the polls, he found a line of party agents who offered him their respective ballots. He took whichever one he desired, went into the polling place, and dropped it in the box. There was no need to mark a cross. Nor was the voting really secret, for the ballots were of all sizes and tints. Even when folded they could be recognized by everyone in the room. But the law of 1919 provides, that the candidates, or political parties, may have sample ballots printed (at their own expense) by the public authorities, and sent to the voters through the mails without payment of postage. As the law also permits a certain amount of political literature to be enclosed with the ballot, all the political organizations have taken advantage of this provision.

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[1] It should be made clear that all the votes are of equal weight; the voter does not mark his first choice, second choice, and so on, as he is expected to do under the plan of proportional representation which is used in various American cities—in Cleveland, for example.

[2] In some of the larger cities it is the custom to require the voters to call at the *mairie* or some other public office for their electoral cards.

So the voter now gets several ballots in his mail. But at the polling place he gets an official ballot. On entering the polling-room he presents his electoral card, which identifies him. If he has lost or forgotten to bring it he can establish his identity in any other way that is satisfactory to the officials of the poll. Then he is given an opaque, white envelope with which he retires into a screened compartment (*isolair*) where he puts his ballot into the envelope, seals it up, and then drops the sealed envelope in the ballot box.

The polling officials.

In the smaller communes, where there is only a single polling place, the mayor acts as chief election officer, attended by four members of the municipal council who serve as his assistants. These five constitute the bureau of the poll and by a majority vote decide all questions that may arise. There is also a poll clerk, or secretary, who is appointed by the mayor, but he is not a member of the bureau. In the larger communes, where there are several polling places, the mayor presides at one of them and designates various adjoints or councillors to preside at the others. A bureau is similarly constituted for each polling place. All these officials give their services free—which is in sharp contrast with the American custom. In the United States everybody who serves in a polling place expects to be paid, and well paid. By reason of this unpaid service a general election in France costs astonishingly little.

The polling hours.

Voting begins at eight in the morning and continues until six in the evening, unless different hours are fixed by the prefect. Any voter, after he has voted, is permitted to stay in the polling room as long as he desires. Hence the room is often so crowded that the members of the polling bureau have difficulty in doing their work. The air is dense with tobacco smoke, through which can be discerned a general shrugging of shoulders and waving of hands as spirited arguments are conducted by the groups of partisans. Occasionally the arguments grow so warm that the presiding officer of the poll calls in a gendarme and instructs him to clear the room; but this must not be done unless the commotion makes it necessary. An election can be voided if the polling officials unnecessarily interfere with the Frenchman's inalienable right to discuss the destinies of the nation, with all the accompanying pantomime, in full view of the ballot box.

Counting the votes.

When the poll is closed the ballots are counted by members of the polling bureau. But if a large vote has been cast the bureau may call upon bystanders for aid, and this it frequently does. The room is as crowded as ever, even more so, and the counting usually proceeds with some difficulty. Any outsider who has seen it will marvel that any approach to accuracy can be obtained in the result. Yet the count is, on the whole, more accurate than in American polling-places where a policeman keeps everybody except the officials out of range while the count is being made. Spoiled ballots are relatively few in France, but this is not because the voters do their work more intelligently than in other countries. It is because the French practice is to count ballots which would be thrown out in America,—for example, ballots which are cast for more candidates than there are places to be filled. Such ballots are counted for the first three, four, or five names as the case may be. When the counting is finished the returns from each polling place are transmitted to the prefecture where they are consolidated, in accordance with the rules laid down in the electoral law of 1919, by a board of scrutineers (*commission de recensement*). This body makes official announcement of the result after it has figured the quota and applied this quota to the returns.

Determining the result.

The procedure in figuring the quota and determining the result of an election in accordance with the provisions of this law is somewhat complicated, but the various steps may be summarized in this way: Any candidate or group of candidates receiving an absolute majority of all the polled votes is forthwith declared elected. That is what happens in a good many cases, and in all such instances the plan works precisely as under the system of election by *scrutin de liste.* But if all the seats are not filled in this way, an electoral quota is calculated by dividing into the total number of valid ballots the number of seats to be filled. Thus, if there are five seats, and fifty thousand ballots have been cast, the electoral quota is 10,000. Now, if it

The electoral quota.

were the practice to nominate candidates individually, it would be enough to declare each candidate receiving this quota elected; but in France the candidates are almost always nominated in groups, each group being placed in nomination by some political party or organization. It was deemed desirable, therefore, that representation be accorded to parties rather than that each candidate should stand or fall on his own success as a vote-getter. To this end the votes received by the members of each list of candidates are averaged, and this average, divided by the electoral quota, determines how many seats each group shall have. A distribution of seats is accordingly made on that basis. If the average obtained by the strongest list is three times the electoral quota, for example, that list gets three seats, that is, its three highest candidates are declared elected. Then, if any seats remain unfilled a secondary distribution of seats is made by giving them to the list that has polled the highest average vote.[1]

Theory and workings of the system.

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[1] The system may be illustrated in this way: Let us suppose that there are six deputies to be chosen, that 60,600 votes are polled, and that the voting turns out as follows:

Radical Socialist List	
Durantaye	32,445
Hertel	29,800
Godefroy	28,950
Linctot	25,275
Boucher	18,301
Tremblay	12,740
	147,511
Average	24,585

Republican Socialist List	
Raudot	18,215
Morel	16,245
Legendre	15,800
LaSalle	12,520
Tonti	9,202
Perrot	4,131
	76,113
Average	12,685

Democratic Republican List	
Saurel	16,101
Lebœuf	14,923
Lemieux	12,244
Raymond	8,502
Alexandre	6,007
Salières	5,211
	62,988
Average	10,498

Communist List	
Dombourg	5,271
Lafontaine	4,111
Papineau	3,422
Siegfried	1,324
Bourassa	1,287
Mercier	990
	16,405
Average	2,734

Total vote 60,600 divided by 6 (deputies to be chosen) gives an electoral quota of 10,100.

Now it will be seen that no candidate but one (Durantaye) has obtained a clear majority of all the votes cast. He, of course, is declared elected. The average of the Radical Socialist list is more than twice the quota, so two additional candidates from this list are declared elected (Hertel and

Second elections.

Under certain conditions an election may turn out to be indecisive. The law provides that if fewer than half the total number of registered voters go to the polls the election must be held over again. A second election is also held if no list of candidates succeeds in obtaining the electoral quota—a result which may easily eventuate if there are many lists in the field. The second election, however, is always decisive no matter how small the vote may be. If no list manages to attain an average equal to the quota, the seats are assigned on a plurality basis, that is, the highest candidates are declared elected without regard to the grouping.

How the plan is defective.

The foregoing plan, as has been said, does not constitute a true system of proportional representation. The elections thus far held under it have demonstrated that it does not secure anything like exact proportionality. The secondary distribution gives a heavy advantage to the strongest party, and when there are several lists in the field it may happen that most of the seats are allotted on this basis. Indeed, the general tendency of the plan is to give a strong party more than its numerical proportion and a weak party no representation at all.[1] The assignment of seats to candidates in the order of their votes is an arrangement that encourages "bulleting," as it is termed in America, that is, voting for a single name on the list. Ordinarily all the names on the party's list ought to obtain the same number of votes (like the names of presidential electors in America); if some happen to get more than the others it is likely to be the result of accident, carelessness, or political manipulation. The system is not giving satisfaction in France and a movement to change it is already gaining strength.

Disputed elections.

If disputes arise concerning the results of an election, they are decided by the Chamber under the constitutional provision which empowers it to determine the qualifications of its own

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Godefroy). For a like reason the Republican Socialists are given one seat, which goes to Raudot, and so are the Democratic Republicans (Saurel). Thus five deputies are elected on the primary distribution of seats. But there is still a sixth deputy to be chosen, and this seat goes to the Radical Socialists because their average is the highest. Hence Linctot is elected.

It should be explained, however, that there are usually no such discrepancies in the votes polled by the several candidates comprised within the same list as the foregoing illustration discloses. As a rule all the candidates in the same list run fairly well together.

[1] For a criticism of the system see H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1922), pp. 107-108.

members. Controversies are first referred to committees which are selected by lot, but the recommendations of these committee are not always accepted by the whole Chamber. Its action in this matter is largely influenced by partisan considerations. Protests are often filed on the grounds of intimidation, bribery, or corruption, and if the Chamber upholds these protests it may annul the election. Then a new election is ordered. But the Chamber cannot impose any other penalty upon candidates who have been guilty of electoral corruption. They may be prosecuted, however, in the courts.

Election expenditures.

There is no law which limits the amount which a candidate may legitimately spend in getting himself elected to the Chamber. So long as he does not spend it corruptly he may pay out as much as he likes and he is not required to publish a statement of his expenditures. In England and in the United States there are stringent laws relating to maximum political expenditures, but in France there are no limitations of this sort. Nor does there seem to be need for any, since public opinion provides an adequate check. An outpouring of money on behalf of any candidate, or group of candidates, would prove a boomerang in France for the people are not accustomed to it and would probably resent the innovation. So the amounts expended by candidates for election to the Chamber of Deputies are very much smaller, on the average, than those spent in American congressional campaigns.

Absence of electoral frauds.

On the whole the elections are honestly and fairly conducted in France. Election frauds are not frequent, although some gross instances have been uncovered from time to time, especially in the southern portion of the country. The offence of "stuffing the ballot box," a trick well-known to Americans of a generation ago, has not yet disappeared in France. Lord Bryce tells a story of one polling place in which, as the hour for closing approached, it was found that only a small vote had been cast. The mayor of the commune, on being informed of this, said in a cryptic whisper to the polling officials: "It is your duty to complete the work of universal suffrage,"—and presumably they obeyed orders. Sometimes, in a hotly-contested election, the rival partisans have invaded the polling place and engaged in a fist-fight during which the ballot box was smashed open and the ballots scattered to the four winds of heaven.

Putting pressure on the electorate.

Minor forms of corruption prevail in French elections as in those of all other countries where party feeling runs high. The neighboring cabarets do a good business on election day, and politicians sometimes foot the bills. Employers are said to be over-zealous at times in persuading their workers, and in some rural districts it is alleged that the landlords bring pressure to bear on their tenants. A generation ago it was said that the priests in many parts of France were exercising too much political influence over their parishioners, but today this complaint is seldom heard. Pressure now comes chiefly from the prefect, the subprefect, and the other public functionaries. These officials are untiring in their efforts to secure the election of deputies who will support the ministry. A ministry which is in power when the election comes has a great advantage over its opponents by reason of the influence which these public officials can exert. Even in this respect, however, conditions are much better than they used to be.

The Chamber's sessions.

The Chamber of Deputies meets each year on a date fixed by the constitution. It is not called together at the discretion of the ministry as is the British House of Commons.[1] Two sessions a year are held, one beginning in January and lasting till July; the other beginning in November and continuing till January. With the exception of about three months, therefore, the Chamber is continually in session. The daily sittings begin at two o'clock in the afternoon and last until six or seven. When the urgency of business requires longer daily sittings the Chamber meets earlier in the day. It rarely prolongs its sessions into the night. Since 1879 the sessions have been held in the Palais Bourbon, a stately building with a Corinthian peristyle which stands on the left bank of the Seine directly across from the Place de la Concorde.

Arrangement of seats.

The hall in which the deputies hold their sessions is semicircular in shape with a dozen rows of seats. Each seat except those in the front row has a small desk hinged to the seat in front of it. The front row is reserved for ministers, undersecretaries, and other executive officers who are present in connection with the business of the day. Behind them the rows of seats are elevated like those of an amphitheatre. Facing the semicircle is the president's dais or platform, and in front of this, on a somewhat lower level, is the tribune from which the members address the Chamber. A deputy is allowed to speak from his place on the floor if he so desires, but as a rule he merely obtains recognition from the floor and then mounts the tribune where he can face his entire audience. This method of conducting the debates is in many of its practical aspects quite superior to the plan pursued in the English House of Commons and in the American House of Representatives for it ensures every member a chance to hear what is being said. There is no breaking in upon deputies while they are speaking, asking them to "yield the floor" as in Congress. On the other hand interruptions in the way of shouts and ironical cheers from some sector of the floor are not infrequent. It should be explained that the seats are assigned in sectors to the various political groups, the conservatives being given the extreme right and the communists the extreme left, with the moderate groups between. There are galleries to which outsiders are admitted except on days when the Chamber decides to meet in secret session. This it may do by a majority at any time.

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[1] The President of the Republic may, however, call it together at an earlier date than that fixed by the constitution.

Adjournments and prorogations.

The constitutional laws of 1875 contain the curious provision that both the Chamber of Deputies and the Senate must remain in session for at least five months in every year, even if there is no business for them to do. But this provision has not given rise to any embarrassment because there has always been enough work to keep both Houses busy for an even longer period. Anyhow the chambers could adjourn if need be and the recess would be counted in reckoning the five months. The President of the Republic may adjourn both chambers for a period not exceeding one month, subject to the restriction that he must not do this more than twice during the same session. When the two chambers have been in session for five months he may also prorogue them, that is, bring their sessions to an end. Finally, as has been said, he may dissolve the Chamber of Deputies with the consent of the Senate; but this he has not done for nearly fifty years.

Personnel of the Chamber.

As for the men who make up the Chamber of Deputies there is a general impression that they do not average up to the standards of the British House of Commons or the American House of Representatives. It is difficult to tell how much real basis for this impression there may be, because the relative quality of the members in legislative bodies is not a thing that lends itself to statistical analysis. But if the impression be well founded, there are various reasons which may account for it. The practice of electing deputies from relatively small districts, which was not abandoned until 1919, tended to fill the Chamber with local politicians. It also helped to lower the position of deputy to that of a patronage-seeker for his own district. A large portion of his time was spent in finding jobs for needy followers, visiting the prefecture in quest of favors, and serving as a messenger for everybody who had official business in Paris. Under the new system of election it is hoped that the position will be a more dignified one. The decentralization of parties in France has also had an influence upon the quality of the men elected to the Chamber. It has given a great advantage to the candidate who can intrigue and form alliances, whose political principles are not firmly fixed, and who is willing to compromise in order to secure votes. Deputantism, as the French call it, is a synonym for ward politics.

The Chamber of Deputies is unlike the House of Commons in that very few of its members come from families allied with the old nobility. It contains no considerable element analogous to the English squires or country gentlemen. There are many large landowners in France, especially in the western part of the country; but very few ever get themselves elected. Unlike the American House of Representatives, moreover, the Chamber of Deputies does not contain a large number of men who directly represent the interests of agriculture, industry, and commerce. It includes few men who have ever worked with their hands. The largest element is made up of professional men,—lawyers, physicians, journalists, retired public officials, educators—including a good many professional politicians.

Has the standard declined?

Frenchmen often complain that there has been a decline in the average standard of ability, independence, and intelligence of their lawmakers during the past fifty years. But that is not surprising. One hears the same complaint in other countries. They grumble that there is no Thiers or Gambetta in the Chamber of Deputies today, just as Americans seek in vain for Websters and Clays among contemporary congressmen at Washington. The trouble is that everywhere the world idealizes the men of the past and exalts them to a pedestal on which their contemporaries would not have placed them. A legislative body often gives an impression of mediocrity for the mere reason that the times give it nothing heroic to do. Much latent ability may be ensconced therein, but with no chance to exemplify itself.

One gets the impression that the French Chamber is strongly bourgeois. Someone has ventured the suggestion that the Chamber of Deputies is controlled by the middle class, while the House of Commons is dominated by the muddle class. Being a deputy gives a man no social standing such as attaches to membership in the House of Commons. An English M. P., if he be reasonably presentable, has the social entrée, and it depends upon himself whether he can convert it into a permanent social anchorage. The increase of Laborists in the House of Commons has changed this situation somewhat, but the number of members who stand for social attainment still continues to be large at Westminster, much larger than in the membership of the Chamber of Deputies. On the other hand the French chamber contains a greater number of men who possess not merely the gift of ready speech but the ability to speak lucidly, effectively, and to the point. Nowhere is better diction used than from the tribune of the Palais Bourbon.

The ladder of French politics.

Most of the deputies are men of political experience. It is rarely that anyone goes direct to the Chamber without any earlier political training. Young Frenchmen who are politically ambitious usually get themselves elected to the council of the commune. After service there they become adjoints, or mayors, or members of the general council of the department. As in America they find it advantageous to join various societies and to use these affiliations as a means of broadening their acquaintance. Aspirants also find it desirable to keep their names before the public in the newspapers, and every rising French politician tries to hitch one or more local newspapers to his chariot. In view of the laxness of party discipline, the personality of the candidate counts for more in France than in England or America. Lord Bryce once remarked that the Frenchman who aspires to be a deputy must "cultivate an easy and genial manner," but must also, he says, "observe a decent regularity of life," especially in the staider rural areas. The *âme rigide* of rural France is as easy to shock as the puritan conscience of rural America. The candidate for the British House of Commons is expected to "nurse his constituency," and must be a good angel to every worthy local cause. But there has been very little of this nursing in France, even while the districts were small, and they have now become too large to be nursed except by a man of great affluence.

Deputies are poorly paid.

Members of the Chamber are paid twenty-seven thousand francs per annum ($5,400 at the normal rate of exchange). American congressmen are paid nearly twice as much, and they are provided with liberal allowances for secretarial service which the French deputies do not have. This inadequate payment of their representatives may be an additional reason why the French people have not succeeded in maintaining high standards in the Chamber. Living in Paris is much more expensive than in the provinces and it is hard to see how most of the deputies manage to make both ends meet. Some of them do it by leaving their families at home and contenting themselves with modest lodgings in the capital. Every deputy, of course, expects to go higher and thus to obtain a heavier emolument from the public purse. He hopes for a place in the ministry, and as ministries are so frequently reconstructed his hope is by no means a forlorn one.

The deputy as a purveyor of patronage.

A large part of a deputy's time is spent in doing favors for his friends. "Ministers dispense the honors, the medals and ribands, the administrative posts, mostly of small consequence, the tobacco licenses, and give the college bursaries. To them the deputy goes when the commune or the arrondissement desires a bridge or a road, when a farmer wants to be compensated for damage done to his vines by a hail-storm, when a taxpayer disputes the tax-gatherer's claim, when a parent wishes to have an indulgent view taken of his son's performances in an examination, when a litigant thinks that a word of recommendation might help him in a court of justice. The constituent writes to the deputy, and the deputy approaches the minister, and when either a grant of money to the commune, or a riband, or a salaried post is in question, the minister is made to understand that the deputy's support at the next critical division will be affected by the more or less benevolent spirit the administration displays. Thus, beside the great game of politics played by the parties in the Chamber, beside the pressure of the commissions upon the administration, there is a continuous process of triangular trafficking between the constituents, the deputy, and the ministers, which is, to the two latter, always vexatious and often humiliating."[1]

Influence of newspapers.

The oratory of the pen counts for more in French politics than in the politics of England or the United States. Candidates make speeches during their campaigns, it is true, but in reaching the public they place greater dependence upon the newspapers. Nearly all French newspapers are obtrusively partisan and personal; they profess none of the aloofness or neutrality that marks some of the great daily journals in America. The French newspaper is a personality, not an institution. It is the organ of its editor and the French editor never hides his light under a bushel. His editorials are flaming deliverances, and he prints them on the front page with his name signed to them. So, when an editor or one of his close friends happens to be a candidate, the newspaper will devote its whole energies to the task of electing him. The news of the day will go off the front page if necessary. That is why the newspapers have become almost as important as parties in the politics of France.

The debates.

There are real debates in the Chamber of Deputies, with set speeches eloquently delivered. These speeches are not usually long,—they rarely exceed a half hour,—but they are earnest, often impassioned, and sometimes brilliant. The deputies interrupt with applause or with taunts and cries of all kinds, while the presiding officer vigorously rings his bell for order. Not always, however, do the speakers restrict themselves to the issue which is before the Chamber; they frequently use the tribune for disquisitions on politics in general. The newspapers rarely print any of the speeches in full, but they usually give the substance, duly flavored with their own praise or condemnation. To the onlooker from the galleries the debates in the French Chamber seem very acrid at times, but there is not much personal rancor behind the oratorical thrusts. Deputies shake fists at one another on the floor and then fraternize in the corridors. On the other hand there is real bitterness once in a while, and occasionally a taunt from the floor produces a challenge to a duel.

The Chamber's powers.

The powers of the Chamber do not require much explanation. Its affirmative action is essential to the enactment of all laws whatsoever. All financial measures must originate in this branch of the French parliament, and although the Senate is not constitutionally debarred from amending or rejecting such measures it has generally refrained from interference. Passing the budget is the Chamber's big task each year and in this field its decisions are virtually final. Changes, after the budget has gone to the Senate, are relatively infrequent. As for non-financial measures, most of them also originate in the Chamber of Deputies but the Senate feels free to amend, delay, or reject these bills at its discretion. As has been pointed out, its usual course, (when it does not like a bill) is to refer the measure to a committee for suffocation. But if the Chamber shows a live and sustained interest in the measure it will stir up the ministers and the ministers may then prod the Senate in the endeavor to obtain its concurrence. The process of lawmaking, however, is a big enough subject for a separate chapter.

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[1] Lord Bryce, *Modern Democracies*, Vol. I, p. 258.

Besides the books listed at the close of the three preceding chapters, mention may be made of Eugène Pierre's *Traité de droit politique, électoral, et parlementaire* (5th edition, Paris, 1919); Henri Leyret's *Le gouvernement et le parlement* (Paris, 1919); Henri Maret's *Le parlement* (Paris, 1920), and the various illuminating articles which appear from time to time in the *Revue politique et parlementaire.* See also *below,* p. 486.

CHAPTER XXV

THE PROCESS OF LAWMAKING

> He that makes the law knows better than anyone else how it should be executed and interpreted. It would seem, then, that there could be no better constitution than one in which the executive power is united with the legislative.—*Jean-Jacques Rousseau.*

What the legislative process involves.

Legislative bodies have a threefold purpose: they make the laws, they authorize the expenditures, and they control admintrative policy. By legislating they provide a system of rules governing the conduct of the people; by adopting a budget they furnish the funds with which government can be carried on; and by means of enquiries, interpellations, and investigations they exercise a continuous supervision over the administrative authorities. This represents a vast amount of work, and no legislature would ever manage to get it done without elaborate rules of procedure. These rules are not designed merely to expedite the passage of laws. Were that the case there would be no need for so many of them. They aim to ensure economy in public expenditures, to safeguard the rights of minorities in the legislative chamber, and to provide channels through which the ministers or other executive officials may be controlled. What we customarily call the "process of lawmaking," therefore, is in reality a good deal more than that. It is a process of legislation, appropriation, and supervision combined.

Parliamentary officials.

Both branches of the French parliament elect their own presiding officers and determine their own rules of procedure. The presiding officer is chosen, in each chamber, by secret ballot. Two or more vice presidents are chosen at the same time, also several secretaries and some additional functionaries known as quæstors.[1] Together these officials serve as a *bureau* or administrative committee and appoint all the subordinate officers such as clerks and messengers.

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[1] One of the vice presidents takes the chair whenever the president is absent. The secretaries serve as tellers when votes are taken: they also supervise the keeping of the stenographic and other records of proceedings. The quæstors are financial officers; they look after the payment of members and of other expenses.

The presiding officers.

The position of the president in both the French chambers differs from that of the speaker in the British House of Commons, but is not very unlike that of the speaker at Washington. He is a party man, the choice of whatever combination of parties happens to control a majority among the members. In the Chamber of Deputies he is always one of the outstanding leaders. Upon his election to the chair he does not cease to be a partisan, as is the case with his prototype in the English House of Commons. By usage he is permitted to favor (if he does not do it too obstrusively) the bloc which elected him. In recent years it has become unusual for the president to leave his chair and take part in the debates, but it has not always been so. The fiery Gambetta, when he presided in the Chamber a generation ago, used to recognize himself, descend from his chair to the tribune, and pour forth oratory by the hour. By usage, also, the president refrains from voting, even in case of a tie. If the vote is even the proposition is declared to be defeated.

Their powers.

In general the powers of the presiding officers in the two French chambers are the same as in other legislatures. They recognize members who desire to speak, put questions to a vote, announce the results, decide points of order, and sign the records of proceedings. There is no important difference between the functions of the president in the Senate and in the Chamber of Deputies. But the president of the Chamber finds greater scope for the exercise of his disciplinary powers inasmuch as the task of maintaining order is much more difficult in the lower branch. The Senate is a well-behaved body which seldom allows its temper to become ruffled. The Chamber of Deputies, on the other hand, contains a sprinkling of hotheads who frequently get out of hand. Then the president rings his bell and refuses to recognize anyone until the tumult subsides, or he puts on his hat as a warning, and when this does not restore order he suspends the sitting for an hour or two, thus giving the atmosphere an opportunity to cool off.

The committee system:

1. The old plan.

Both chambers of the French parliament make use of committees, or commissions as they are more commonly called. The traditional French method has been to choose committees indirectly by lot. At the opening of each session, and once a month thereafter, the members of each chamber are divided by lot into *bureaux* or sections.[1] Then, whenever it becomes necessary to appoint a committee each bureau contributes one or more members. Until the beginning of the twentieth century all commissions were constituted by the Chamber of Deputies in this way, and the Senate continued the same plan for many years thereafter. When an important project of legislation came before the Chamber a special commission was formed by the bureaus to consider it. But the projects became too numerous and there gradually developed the practice of referring several measures to the same commission. The result of this was to continue some of the commissions throughout the session whereas the original intention was that each commission should expire as soon as it had reported on the individual measure submitted to it. Little by little, in this manner, the work of the Chamber was shifted from special to permanent commissions.

Why it proved unsatisfactory.

But the commissions continued to be chosen by the bureaus, and the latter continued to be selected by lot, once a month. This meant that a permanent commission, by reason of its permanence, remained functioning long after the bureaus which had created it were dissolved. Vacancies on these permanent commissions were therefore filled by appointing members from the same geographical departments as those who had dropped out. Commissions organized in this way could develop no real sense of responsibility. They did not usually reflect the mind of the whole Chamber. A majority of the members on any commission were not necessarily in sympathy with the ministry. Being chosen indirectly by lot there was no reason why they should be. Hence measures which the ministers brought before the Chamber were frequently mutilated by commissions until they were almost unrecognizable. And the reports of the commissions were just as frequently rejected by the majority in the Chamber under ministerial leadership. The orderly process of legislation, and the development of a real committee system, were greatly impeded by this plan of bureau selection. Consequently it was partially abandoned in 1910. Since that date there have been further changes in the rules of the Chamber and at the present time only minor commissions are selected by the old plan. The Senate, in 1920, also made changes in its rules so that its methods of organizing commissions is now much the same as in the Chamber.

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[1] The Senate has nine of these bureaux; the Chamber of Deputies has eleven.

2. The new plan.

Today the Chamber of Deputies maintains twenty regular commissions, each having forty-four members. They are reconstituted annually. Each commission is made up by assigning a proportionate representation to the various party groups in the Chamber as a whole. The procedure is as follows: first the numerical strength of each party-group in the Chamber is figured and officially announced.[1] Then each group is notified that it is entitled to its due proportion of members on each of the twenty commissions and is asked to nominate them. Each group thereupon holds a caucus and selects from its own ranks a sufficient number of members as requested. This is usually accompanied by preliminary conferences and agreements, but if there is any rivalry that cannot be settled in this way the group decides the matter by secret ballot. When each group has named its own representatives on all the commissions the complete lists are made up and published. If, at the end of three days, no protest signed by at least fifty deputies has been lodged with the Chamber, the commissions are organized; but if a protest is filed in proper form the whole Chamber takes up the matter and settles it by vote if necessary. In the Senate the procedure is much the same but there are only twelve regular commissions to be appointed, there are fewer party groups to be represented, the commissions are smaller, and any twenty senators may file a protest against the acceptance of the group nominations.[2]

The bureaus still remain in both chambers of the French parliament and are still regularly constituted by lot. But they retain only a shadow of their former importance. At the beginning of each parliament they canvass the election returns. Thereafter, from time to time, they are called upon to furnish members for special commissions but only when such commissions are expressly provided for. All important business now goes to the regular commissions and there is little occasion to provide for the appointment of special commissions in either House.

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[1] In case of doubt the individual deputy is asked to declare the group to which he belongs. If he disclaims allegiance to any group he is listed with the "non-inscrits," and these also are given their proportionate share of representation on the commissions.

[2] For a full discussion of the procedure see the article on "Parliamentary Commissions in France" by Professor Lindsay Rogers in the *Political Science Quarterly*, vol. xxxviii, pp. 413-442; 602-635 (September-December, 1923).

Its distinct merits over the old.

The new plan of organizing the permanent commissions in a way that ensures a proportional representation of the various party groups was opposed on the ground that it would cause the deputies to think of partisanship first and patriotism second. But it has proved far superior to the older method. It places the majority bloc in control of every commission and thereby diminishes the chance that the reports of commissions will be rejected by the Chamber as a whole. It ensures to the ministry a non-hostile consideration of its measures. It affords each party group an opportunity to place its members on commissions in which they are interested. Under the old plan a deputy's own preferences were of little account in determining his assignment. Finally, the new arrangement imposes upon the commissions a sense of responsibility for what they do. They have become parliamentary committees in the English sense, but with an even greater influence.

How the commissions do their work.

Each of these regular commissions has its own field of work. One deals with measures relating to the army, another with public works, a third with industrial relations.[1] Every legislative proposal is referred to the appropriate commission and makes no further progress in the Chamber until the commission reports on it. The commissions usually confine their sittings to Wednesday and Saturday of each week,[2] there being no plenary sessions of the Chamber on these days. But they also meet on other days if there is urgent work to be done. The rules of the Chamber provide that 'at least one day per week" must be assigned to them. There are no public hearings as in Great Britain and America; the sessions of French parliamentary commissions are always secret although the author of the bill which is under consideration may be present.[3] This is one of the noteworthy features of French parliamentary usage, yet it hardly seems consistent with the commonly recognized principles of democratic government. Nor does it make for efficiency in the work of the commissions, because experience has shown that there is no better way of getting information than by means of open hearings. On the other hand, the commissions of the Chamber always confer with the leading supporters and opponents of any important measure which they are considering. This ensures that both sides of the question will be heard before a report is made. Each commission, moreover, is required to keep a detailed record of its proceedings and this record is deposited in the archives of the Chamber where any deputy may inspect it.

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[1] There are also standing commissions on the navy, agriculture, education, public health, commerce, etc.

[2] In the Senate they have Wednesdays regularly, and Saturdays occasionally.

[3] Even deputies who are not members of the commission have no right to attend unless the Chamber by special resolution authorizes their attendance.

Government measures and private members' bills as in England.

The French process of lawmaking resembles the English in one feature, namely, in the making of a distinction between government measures (*projets de loi*), and measures introduced by private members (*propositions de loi*). Government measures are submitted to parliament in the name of the President of the Republic, but directly by a member of the ministry. Immediately upon introduction they are referred, without reading or debate, to the appropriate regular commission. But measures of all sorts, both general or local in scope, may also be introduced by any senator or deputy. Until about twenty years ago all such measures were first referred to a monthly committee (*commission d'initiative*) constituted under the old plan, and this body could reject any bill which it did not deem worthy of further consideration. But nowadays all propositions introduced by senators or deputies are ordinarily referred without debate to a commission in the same way as government measures. The presiding officer may, however, refuse to take this action if he deems a measure unconstitutional. And in any case a proposition introduced by an individual senator or deputy has very little chance of being favorably reported if the ministry is hostile to it. In this respect the situation is much the same as in England, the general theory of lawmaking in both countries being that the ministry has the chief responsibility for it. Accordingly, when individual senators or deputies desire legislation on any matter of general importance the usual plan is to offer a resolution requesting the ministers to draft and submit a *projet*, and if this resolution is adopted the ministers do as they are bidden.

How bills are introduced.

Bills may be introduced in either branch of the French parliament but most of them, as a matter of practice, originate in the Chamber of Deputies. Among important measures the great majority are brought in as *projets* by the ministers. When any senator or deputy becomes interested in having a certain law enacted, his usual first step is to confer with the minister in whose department the matter seems to lie. He suggests to this minister the desirability of drafting and submitting a government measure. If the minister is favorably impressed he will lay the matter before his colleagues in the cabinet, and if they concur with him the rest is easy. A bill will be prepared, introduced as a ministerial measure, and probably passed. So the senators and deputies put all sorts of pressure upon the ministers in order to gain their support for particular measures. If they do not succeed in converting the ministers they may go ahead by introducing their own *propositions*, but without much likelihood of ultimate success unless the minister undergoes a change of heart. Active ministerial opposition is fatal to the measure—or fatal to the ministry—for when the cabinet asks the Chamber to reject a bill the latter must either do so or find a new ministry to deal with. But the issue is rarely pressed to this extreme. Each committee, during its consideration of any bill which has been introduced by a senator or deputy, makes it a point to ascertain the attitude of the ministers. Under normal conditions, if the ministers are actively hostile to the proposition, it will not be favorably reported to the Chamber. On the other hand if the ministers are not strongly opposed to the whole measure but only to some features of it, they may suggest amendments which the commission will usually incorporate before reporting the bill.

The controlling hand of the ministry.

How bills are reported from the commissions.

Let us assume, however, that a measure has been referred to a commission and is approved by it. What is the next step? First of all the commission appoints a reporter, that is, it names one of its own members (not necessarily its chairman) to report the measure and defend it in the Chamber. This it does even in the case of government measures—a practice which contrasts with that of the standing committees in the House of Commons. In England a government measure is always presented, explained, and defended on the floor by a member of the ministry. This minister (or his representative in the House), is primarily responsible for the progress of the bill at all stages. In the American House of Representatives bills are ordinarily reported by the chairman of the committee which has considered them. But in France the "reporters" appointed by the commissions to steer government measures through parliament are neither ministers nor chairmen; they are private members. The ministers may join in the debate, and usually do; but they can not direct it. For the moment the minister who has framed the bill, and who presumably knows most about it, is eclipsed by a private member. The chairman of the commission also plays a second rôle to the reporter.

Defects of the system.

Here is a division of functions and responsibility which has not been altogether salutary in its effects. There is much to be said for the English plan of having each minister pilot his own bills through the House. There is also a good deal to be said for the American plan of having the chairman of the committee do the steering. In both cases the responsibility is fixed and unified. The French method divides the leadership. It consequently divides the responsibility and this diffusion would be fatal were it not for the fact that the reporters and the ministers usually work in coöperation.

The progress of a measure in the Chamber.

When a commission is ready to report a measure the text is printed and distributed to the members of the Chamber. On the day appointed for debating it the reporter mounts the tribune and explains his commission's recommendation. Speeches dealing with the general principles of the bill may then follow, but questions relating to details and phraseology are passed over. No amendments are in order at this stage. When the debate on the general features of the bill has been finished a vote is taken on the question of proceeding to consider the details ("passing to the articles" it is called). If the Chamber votes No on this question the measure is defeated. But if it votes Yes the bill is then taken up section by section as in the House of Commons. During this stage amendments may be proposed by any member. In order to be recognized by the chair, however, a member must put his name on the presiding officer's roster and take his turn.[1] Sometimes, when important measures are under consideration, this roster contains scores of names and the debate runs on day after day.

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[1] This does not apply to the ministers or to the reporter who is in charge of the bill, both of whom are entitled to recognition whenever they ask for it.

Outsiders participate in the French debates.

In the House of Commons it is an unwritten rule that no one who is not a member may speak from the floor. He may appear at the bar of the House and have his say, but this position is technically outside the chamber itself. Congress is also averse to hearing from any save its own members and immediate officials, although the President may address it in person at any time. Members of the American cabinet never speak in either House. If they attend they sit in the gallery. In the Chamber of Deputies, on the other hand, non-members take a hand in almost every debate—ministers who do not happen to have seats in the Chamber, undersecretaries, and various experts who may be designated by the minister to explain the technical phases of a measure. These functionaries elucidate, defend, or suggest changes. This is particularly true of the debates on the budget. Expert officials from the various branches of the administrative service come in and are sent to the tribune to explain what the figures mean. This plan is not without its advantages, for it means that the talk is by men who know what they are talking about—which cannot always be said of the budget debates in other legislative bodies.

Methods of limiting debate.

These debates on the details of measures might be indefinitely prolonged into filibusters were it not for two considerations which operate to keep discussion within bounds. One is the fact that most of the bills presented in the French Chamber (especially the *projets*) are short and simple; they do not contain page after page of detailed provisions as is the case with so many legislative proposals in Great Britain and America. In France the details are left to be filled in by executive decree. The debate on the general principles of the bill, accordingly exhausts most of the opposition. In the second place the rules permit the Chamber to put an end to the debate on any clause or section of a bill by applying the closure. This can be done by majority vote at any time provided at least two members have spoken on the question, one on each side. A motion to apply the closure cannot be debated in the ordinary way, but before the motion is put an opportunity is always given for one deputy to speak against it. The closure, if carried, does not debar a member of the ministry from continuing the discussion, and ministers frequently take advantage of this privilege. But if a minister prolongs the discussion beyond the closure-vote, at least one deputy must be given the opportunity of replying to him. The intent of the rules is that some private member, and not a minister, shall have the last word.

Debating by proxy.

There is one custom in the French Chamber which deserves mention, namely, the practice of permitting absent members to write their speeches and have them read by their friends. When a deputy is susceptible to stage-fright, or has a poor voice, he takes this way of getting his ideas before the Chamber. He writes an oration—or gets some facile journalist to do it for him. Then he persuades some Demosthenes from his own party to deliver it for him. On the other hand there is no provision, as in the American House of Representatives, for having speeches printed without being delivered. "Leave to print" is never voted in France.

Methods of voting in the Chamber.

Votes are taken by a show of hands, or by calling on the Ayes and the Noes to rise in succession. If there is any doubt as to the accuracy of the count it is not customary to call the roll (as in America) or to have the members pass through turnstiles into division lobbies (as in England). Instead of proceeding to a rollcall, a balloting urn is passed from seat to seat and each deputy drops his ballot into it. There is no secrecy in this balloting; each deputy can see how his neighbors vote.[1] If a deputy is absent he may ask some fellow-member to put in a ballot for him. France is one of the few countries which permits its legislators to vote otherwise than in person.[2] Finally, if the result of this ballot does not satisfy the Chamber, fifty members may demand a "ballot at the tribune." In this case the names of the deputies are called in alphabetical order. As each name is called the deputy walks to the tribune and hands his white or blue ballot to one of the secretaries. No proxy

[1] The ballots are in the form of small slips of paper which are provided by the bureau of the Chamber at the beginning of each session. Every deputy is given a package of these slips, of which some are white and some are blue, each slip having his name printed on it. He keeps these slips in the little swivel desk which is attached to the back of the seat immediately in front of his own. When a balloting takes place he uses a white slip to vote Aye, or a blue slip to vote No.

[2] The privilege of voting by proxy has been considerably abused. "A deputy who is detained by political or social duties asks some friendly member to cast a ballot for him; by way of being on the safe side he asks several of his friends to do so. Half a dozen of his ballots may be thrown into the urn. Ballots are often cast for members without their permission and even for members who are present." E. M. Sait, *The Government and Politics of France.* (New York, 1920), p. 220.

voting is allowed in this case, hence the balloting at the tribune sometimes gives a different result from the balloting in the urn.

Measures which pass the Chamber are then sent to the Senate.

When the debate "on the articles" has been concluded the question of passing the bill as a whole is submitted to the Chamber and if this vote is affirmative the measure goes to the Senate where it follows much the same procedure as in the lower house. Having passed the Senate it is laid before the President of the Republic—not for his signature but for promulgation. The president's approval is not essential to the validity of a law, but the constitution authorizes him to delay promulgation, meanwhile asking the chambers to reconsider their action. This power to delay promulgation is of no practical importance, however, because the president never exercises it.

What happens when the two Houses disagree?

In order to be duly enacted, a bill must be passed by both the Senate and the Chamber of Deputies in exactly the same form. Any amendment made by one chamber will serve to defeat a measure unless it is agreed to by the other. Bills are frequently hung up by a failure to procure agreement on some particular provision, sometimes a minor provision. When this happens with respect to government measures the usual practice is for the ministers to intervene and break the deadlock if they can. They may suggest a compromise and urge it from the tribune in both chambers. This they are able to do in a direct and effective way because they have the right to speak in both. Or, if the issue is one of real importance, the ministers can demand that one of the chambers recede and may threaten to resign if it does not. In the case of private members' bills (*propositions*) the ministers do not intervene, and compromises are not so easily effected.

The French budget system:

In France, as in other countries, the most important business at every legislative session is related to public revenues or public expenditures. France has had a national budget system for many years, and in its main features this system is not unlike that of Great Britain. The work of framing the budget is begun each autumn by the minister of finance who requests the other ministers to prepare their estimates for the next fiscal year. When these estimates have been obtained they are consolidated into one huge document and placed before the ministry for revision. Accompanying the estimates is a statement, pre-

1. The estimates.

pared by the same minister, showing the anticipated revenues. The ministry revises and adjusts the figures as may seem advisable, its aim being to bring the ordinary expenditures within the limit set by the estimated national income. In France the budget makes a distinction between ordinary and extraordinary expenditures. The former include, or are supposed to include, all the current expenses of government; the latter comprise expenditures which are not of a current nature, such as the cost of carrying on a war or restoring devastated territory. Extraordinary expenditures are not paid out of current revenue but by borrowing money. The distinction is sound in principle but in its practical application it has left much to be desired. There is a strong temptation to secure a balance between current revenue and current expenditure by transferring to the "extraordinary" list many things which do not really belong there. French ministries have done this on a considerable scale since the war. Billions of francs have been borrowed for extraordinary expenses on the assumption that the money will ultimately be repaid out of the German reparations.

2. The two types of expenditure.

3. The *projet* is laid before the Chamber and referred to the budget committee.

When the ministry has finished with the estimates of receipts and expenditures they are presented in a *projet* to the Chamber of Deputies.[1] This is done in a budget speech by the minister of finance. The Chamber, after hearing the minister's general survey, refers the whole matter without debate to its budget commission, which is the most important of its regular committees. This commission forthwith pitches into work on the ponderous *dossier* and may spend months at its task. Public hearings are not held, as in Congress, but the budget commission consults freely with the financial officers of all the ministerial departments. It appoints subcommittees to study portions of the estimates, and these subcommittees sometimes become so inquisitive that the ministers resent their intrusion into departmental affairs. On the whole, however, the budget commission works in coöperation with the ministers and rarely assumes a hostile attitude. It is free to insert, strike out, reduce, or increase, any item,—and it does make a good many changes, but they are not of great importance. The established practice is to make no substantial alterations, particularly by way of increase, unless the commission is assured that the ministry will approve. No other course, indeed, would be practicable, for if the commission and the ministry were not in agreement it would be necessary for the Chamber to choose between supporting the ministry or forcing it to resign.

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[1] In printed form the budget is a document of several hundred pages and contains forty to fifty thousand items, all grouped by administrative departments.

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When the commission has finished its work, the revised budget is laid before the whole Chamber where it is dealt with like any other *projet*. There is a debate on its general principles, followed by a consideration of the "articles" or items. The *rapporteur* of the budget commission, not the minister of finance, is in charge of the measure and is responsible for getting it through the Chamber without mishap. The minister is merely his adjutant. This is in contrast with the English practice of having the chancellor of the exchequer guide the budget through the House of Commons. Nor does it closely resemble the procedure in Congress where the chairman of the committee on appropriations brings the budget before the House and assumes the task of getting it through. Like this chairman, however, the reporter of the budget committee in the French Chamber is invariably a skilled and experienced parliamentarian. He sits on the front bench during the budget debates, with the members of his commission alongside him. As groups of items are taken up in succession he sees to it that questions are answered and objections met. The minister of finance also takes a prominent part in the debate, and is usually the most frequent participant in it; but the reporter is the man who does the steering. It is his nod that sends speakers to the tribune.

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There is one other feature in which French budget procedure differs from English, and it is of much significance. Mention has been made of a famous rule in the House of Commons which provides that no proposal of expenditure can be considered unless it emanates from the crown, that is, from the cabinet. In the Chamber of Deputies there is no such provision, either by rule or by usage. The Chamber can insert new items in the budget or increase the size of items already there.[1] And this freedom it often utilizes, even in the direction of revising the budget upwards. It is true, of course, that the Chamber cannot take this action against the resistance of the ministers unless it is ready to force the ministry's resignation; but it is equally true that the ministers, being human beings, do not force the issue to this alternative if they can avoid it. When the Chamber seems bent on making an increase in the budget they usually assent to it unless the alteration is one that would throw the whole financial scheme out of joint and necessitate a general revision of the figures.

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[1] Since 1900, however, the Chamber has had a rule that no private member may propose during the debate on the *loi de finances* any amendment involving the establishment of a new public office or the increase of any

But usage has tended to secure the same results.

In matters of this kind the customs of a lawmaking body count for more than its formal rules. And the traditions of the Chamber of Deputies are steadily hardening along lines similar to those of the House of Commons. The deputies realize that a minister of finance cannot make his budget balance if the Chamber insists upon changing items at will. A national budget is a very complicated affair, with all its parts adjusted and interlaced. If you change one item, there is always an equally good reason for changing several others, and presently you tear the whole thing wide open. Hence, as a practical matter, there is a strong incentive to let the items stand as they are. Radical changes, when the budget is passing through the Chamber, are now much less common than they used to be.

In addition to proposing changes in the budget when it is under consideration, any member of the Chamber may introduce a proposal which involves the expenditure of money. Such propositions go to one of the regular commissions, depending upon the general purport of the measure. If favorably considered it is then referred to the commission on the budget from which it comes back to the whole Chamber for discussion. The budget commission has adopted the practice of refusing to report any private member's proposition unless the minister of finance gives his approval. This practice has also strengthened the ministry's control over appropriations. The ministry's hand would be even stronger if appropriations could be made for a longer term than a single year. But this is not permitted. The principle of *annualité* requires that all revenues

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existing salary or pension. Nor may any private member offer a resolution asking the ministry to propose such action.

The principle of *annualité*.

and all expenditures shall be authorized for one year only. This requirement is not expressed in the constitutional laws of 1875 but rests on a usage which has been observed ever since the days of the Great Revolution.

Adding "riders" to appropriation bills.

In the Congress of the United States it has long been customary, when appropriation bills are on their way through the Senate or the House of Representatives, to attach "riders" to them. A rider is the name applied to any provision which has no close relation to the bill but is tacked on as an expeditious way of getting it passed. To the annual appropriation for the maintenance of the federal courts, for example, Congress may attach a rider providing that injunctions shall not be issued in labor disputes. Or it may append to the appropriation-bill for the department of agriculture a stipulation that fruit growers shall not be prosecuted for combining to raise prices. A rider may have any degree of irrelevancy. In Congress this privilege of adding riders to money bills has been grossly abused, and the same is true of the French parliament. About a dozen years ago, however, the Chamber of Deputies adopted a rule which forbids the adding of riders to the regular budget. Nothing can now be inserted in the *loi de finances* except items which directly relate to revenue or expenditure. But riders may still be added to special appropriation measures or to ordinary laws.

Final stages in passing the budget.

Putting the budget through the Chamber of Deputies is slow business. It usually takes three months or more. The debate proceeds item by item, but the votes are taken by groups of items. One after another the deputies go to the tribune and utilize some item as the text for a long disquisition on general politics. Personal and local grievances are aired extensively. The presiding officer exerts himself to keep business moving, but not always with success. During the past dozen years the situation has been considerably improved by the operation of a rule which provides that ministers may not be interpellated on matters arising in the course of the budget debates. At any rate, when the debate is finished, and the budget bill has been passed by the Chamber, it goes up to the Senate where its progress is usually more rapid. The Senate also refers the measure to a commission, but this body does not keep it long or study it very carefully. The bill soon comes back and is debated by the Senate as a whole. Under certain limitations (which have already been mentioned) amendments may be proposed by any senator. Now and then some important changes are made by the Senate and the bill is returned to the Chamber, where the amendments may be accepted, or, as often happens, most of them are rejected. In the latter case the minister of finance endeavors to effect a compromise, and in this he is aided, if need be, by a joint committee of conference. Eventually an agreement is reached and the budget act goes to the Elysée for promulgation by the President of the Republic.

The provisional "twelfths."

Now it is obvious that this elaborate procedure must consume a lot of time. Although the minister of finance begins his work of arranging the estimates in October, the budget does not usually reach the President until the following midsummer. Meanwhile a new fiscal year has begun on January first and the government must have money with which to carry on the business of the country. So the two Chambers bridge the gap by voting certain lump sums as requested by the minister. These sums, because they are supposed to cover essential expenditures for one or more months of the year, are known as "provisional twelfths." They are apportioned among the various branches of the administration by presidential decree. Later, when the budget is finally voted, the sums already spent are deducted from the totals.

The Chamber's control of finance.

From the foregoing discussion it will be seen that although the control of national finances exercised by the Chamber of Deputies is not so complete as that of the House of Commons, it is very little weaker. The ministers have the initiative, and the Chamber controls the ministers. Every year a full account of all money spent during the preceding year must be laid before the deputies. The French Senate may amend the budget; but if the Chamber stands firm it nearly always recedes. Not so the Senate of the United States. It alters money bills with considerable freedom; it frequently insists on having its own way, and in the end usually obtains it. So one might sum up the matter in this way: The House of Commons has complete control of national finances both in law and in fact; the Chamber of Deputies has it in fact but not in law; while the House of Representatives has it in neither.

Questions addressed to the ministers.

The Chamber's control of the French ministry is a corollary from its power over the purse. For there is nothing that a ministry can do unless it has funds. Even governments must have nourishment. But the French Chamber has other ways of holding the ministers to account. One of them arises from the privilege of questioning the ministers on the floor. Any deputy can ask questions, either orally or in writing. The minister to whom questions are addressed must answer them unless there are reasons of state which make it advisable not to do so. When the minister has finished it is permissible for the deputy who asked the question to make reply; but no further debate is permitted. The president of the Chamber merely declares that the incident is closed. Hundreds of questions are asked at every session, many of them relating to inconsequential details of administration.

Interpellations.

A much more energetic means of enforcing the continuous responsibility of ministers to the Chamber is provided by the *interpellation*. This is a procedural feature of great importance in France because it often settles the fate of ministries and indeed affords the usual way of determining whether a minister possesses the confidence of the Chamber. In England a ministry rarely goes out of office except when the people pronounce against it at a general election; in France it is hardly ever ousted in this way but is given its *coup de grâce* by an adverse vote on an interpellation in the Chamber. An interpellation is a formal question framed by some member of the Chamber and addressed to a minister; it differs from the ordinary question in that it must always be addressed to the minister in writing; it paves the way for a general debate in which every deputy has the right to speak, and this debate can only be closed by a vote.

How interpellations are presented.

An interpellation may be framed by any member of the Chamber and may relate to any question of public policy except that no interpellation may be raised on any matter that comes up in connection with the annual budget. The interpellation, couched in the form of a question, is presented in writing to the presiding officer of the Chamber who reads it aloud and then sends it to the minister concerned, or, if it raises a question of general policy, he transmits it to the prime minister. If the question is one which would elicit state secrets, and hence in the opinion of the ministers ought not to be discussed, they may refuse to accept the interpellation. This they sometimes do in the case of interpellations which concern matters of foreign policy. But if they accept it a time is then fixed for the minister's reply and for the debate thereon. The debate may be brief or prolonged according to the amount of interest which the Chamber displays in the matter. But in any case it must be concluded by a vote; there is no other way by which the Chamber can get back to its regular order of business.

The motion to close an interpellation debate is made in this form: "The Chamber, having heard the explanation of the minister, passes to the order of the day," or "The Chamber, having heard the declaration of the minister, and being convinced that the grievances voiced during the course of the debate will be duly set right by the government, returns to the order of the day." Several motions, in fact, may be offered, in which case the simple motion to resume business, accompanied by no qualifying clause, is always voted on first. Sometimes a ministry rests content with this simple motion, but as a rule it insists on an expression of confidence—an *ordre du jour motivé,* it is called.

Significance of the interpellation.

Now the significance of this procedure arises from the fact that the ministers must resign unless they can obtain adoption of an order of the day. Most interpellations are not the result of a quest for information. When it is merely information that a deputy wants he can get it more quickly and more easily by asking an ordinary question. The purpose of the interpellation is two-fold: First, to draw the attention of the whole Chamber (and, incidentally, of the newspapers) to some particular phase of ministerial policy which is believed to be fairly open to criticism, and, second, to precipitate a vote which the framers of the interpellation hope will be adverse to the ministry. It is intended to be a means whereby the legislative body exercises its function of holding the administrative authorities to account and thus preventing the rise of an irresponsible bureaucracy. Every ministry is from time to time put upon its mettle in this way. It must prepare to face a series of interpellations at every session of the Chamber. Most of them it will succeed in answering to the satisfaction of the

Chamber, but sooner or later, and perhaps quite unexpectedly, the ministers find themselves overthrown when the vote is taken. More French ministries have been turned out of office in this way than in any other. Hostile deputies lie awake nights thinking up ingenious queries which are bound to cause embarrassment no matter how the ministers may answer them. Even the most wary ministerial politician cannot hope to escape all the traps that are set to catch him.

Objections to it.

The interpellation has been a feature of French parliamentary procedure for a long time and it would now be difficult to abolish it. But most students of comparative government, and some French publicists as well, look upon the interpellation as a nuisance. President Lowell long ago branded it as "a vicious institution." In its actual operation it does not tend to rectify the course of ministerial policy but to wreck the craft. Interpellations are not essential to the maintenance of ministerial responsibility, for England has had no difficulty in getting along without any such procedure, and so have the British self-governing dominions. The privilege is open to flagrant abuse, moreover, as the political history of France has shown. If interpellations were confined to broad issues of public policy there would be something to be said for them, but they are not so confined. Relatively trivial matters are often magnified into issues of nation-wide importance. It stands to reason that even the most capable minister will make a mistake now and then,—an error of judgment which in England or America would be readily overlooked if his general policy commanded approval. In Great Britain the House of Commons has always gone on the principle that a cabinet should not be turned out of office for some relatively inconsequential error which one of the ministers may have made.[1] It parts company with a cabinet only when it feels that the time has come for a new deal all around.

But in France there is no such tradition. The Chamber of

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[1] In the spring of 1923, for example, the home secretary ordered the deportation from England to Ireland of certain Irishmen who were accused of intriguing against the Irish Free State. After the deportation had been accomplished, it turned out that the home secretary had no legal authority to issue such an order, whereupon the deportees were brought back to England. The secretary thereupon offered his resignation, but it was not accepted; on the contrary, parliament passed an act exempting him from liability in the courts for the consequences of his illegal act.

Deputies lets itself get wrought up to a fever heat on some such issue as the proper length of the luncheon period for public employees or the pay of the gendarmes in Paris. The debate crackles as though the salvation of the Republic depended on settling these momentous questions right. The atmosphere grows tense while the deputies, one by one, step forward to the tribune and deposit their white or blue ballots. Outside the Chamber the bookmakers and gamblers are busy laying wagers on the outcome as though the whole proceeding were a cock fight or a horse race. Perhaps the minister who declined to lengthen the luncheon hour emerges in triumph; perhaps he squeezes by with a few ballots to spare; or it may be that the vote marks the end of his ministerial career.

The interpellation is not the only reason for ministerial instability in France.

It is sometimes asserted that the instability of French ministries is not mainly due to the interpellation procedure but results from the bloc system and the tenuous grip which a majority bloc usually maintains upon the Chamber as a whole. French cabinets are practically always coalitions, depending for their support on groups of deputies among whom there is no genuine cohesion. Any test of strength, no matter how applied, would disclose their weakness as compared with English ministries. In the British House of Commons an opposition member can at any time move the adjournment of a debate in order to discuss some alleged grievance. When the budget is under discussion he can move to reduce the salary of some minister. And if a motion of this sort is adopted it has exactly the same effect as an adverse vote upon an interpellation in France. Such motions are made from time to time in the House of Commons, but they are not adopted; they are regularly voted down. This is because the British ministry can count upon the votes when it needs them. In France the ministers have no such unified, dependable support. Their followers sometimes desert the ship by the score when a gust of unpopularity is encountered. So it is not the interpellation procedure alone, but the intrinsic weakness of party discipline that is responsible for shortening the average life of ministries in France.

The Chamber in action.

Few Americans who go to Paris ever think of visiting the Palais Bourbon and taking a look at the deputies in session. This is true even of those who are actively interested in politics at home. Yet the Chamber is well worth a visit, and admission to the galleries can be had for the asking. There is a fair chance of arriving in the midst of an exciting debate, for the sittings of this body rarely bear much resemblance to a love feast. The visitor will be surprised to see the deputies addressing themselves to the audience, and not to the chair as is the practice in other countries. If he understands the language he will be captivated by the swift and often brilliant exchanges of repartee that pass between the tribune and the floor. And if, perchance, his visit happens to occur when the Chamber is deciding the outcome of an interpellation he will see a sight that is not soon forgotten. The excitement, the clamor, the gesticulations, the crowded galleries, the thronged corridors, and all the rest of it—they constitute a spectacle that only Frenchmen can provide. Surveying it all, the spectator may wonder how a great nation ever manages to get its laws made in this way. The answer is that it doesn't. The laws are really framed by administrative experts under the direction of the ministers; they are revised and touched up by commissions; and the details are filled in by presidential decree. The Chamber is a "lawmaking body" in a titular sense only. Its prime function is to reflect the desires and opinions of the French people on matters of general principle and more especially on questions of executive policy. It is the grand inquest of the Republic with the function of criticising the powers that be, and displacing them whenever the occasion arises, as it frequently does.

Obviously the *Règlements de la Chambre des Députés*, and the *Règlements du Sénat*, in other words the rules of the two chambers, are the best sources for the study of their procedure. But mention should also be made of André Breton's volume on *Les commissions et la réforme de la procédure parlementaire* (Paris, 1922); J. Onimus, *Questions et interpellations* (Paris, 1906) and the *Précis élémentaire de legislation financière* (Paris, 1917). French budget procedure is fully explained in René Stourm's book on *Le budget*, which has been translated into English (New York, 1917). The article by Lindsay Rogers, already referred to (*above*, p. 469, note) is excellent and so is the discussion of procedure in Professor Sait's volume (*above*, p. 475). See also the books listed at the close of the two preceding chapters.

CHAPTER XXVI

POLITICAL PARTIES IN FRANCE

To keep united, the only way is to stay disunited.—*Jules Ferry.*

Origin of political parties in France.

Organized political parties have existed for a relatively short time in France. Certainly there were none in Bourbon times, before the Revolution of 1789, for political parties do not exist in a despotism. Nor can the term political parties be very fairly applied to the various factions (Jacobins, Girondists, and the rest) which jostled each other in and out of power during the turmoils of the First Republic. It was not the aim of these factions to get control of the government by constitutional, non-violent methods. Bloodshed and imprisonment figured as a regular part of their day's work. And even after the Revolution had run its course, when Napoleon had been exiled, when France professed to be a constitutional monarchy with a frame of government like that of England, it seemed impossible to create a party system that would function. There were evanescent groupings from time to time during the next thirty years to be sure; but it was not until the establishment of the short-lived Second Republic (1848-1851) that French political parties began to acquire a solid basis. At the general elections of 1849 there were four well-marked party groups in the field. Ranging from Right to Left these were the monarchists, the conservative republicans, the radical republicans, and the socialists. So, if an exact date must be found for the origin of the French party system this one will do as well as any other, inasmuch as the fourfold repartition of political opinion has remained to the present day. All party harmonies and discords during the past seventy-five years have been mere variations of this four-octave composition.

The four basic groups.

The varied twists and turns.

From time to time, however, these four party divisions have proved insufficient to shelter all varieties of opinion among the people, and further disintegrations have taken place. At other times there has been a coalescence of two or more groups into a bloc or working alliance. French parties are constantly shifting like the bits of glass in a kaleidoscope, yet the kaleidoscope is one in which the fragments always represent varying shades of the four basic colors. The American student finds it hard to master the French party system, for the reason that he invariably tries to understand it in the light of his own preconceived ideas. He has his own conceptions of what political parties are and ought to be. These he has derived from his acquaintance with the party system in the United States. Consequently he tries to fit the French system into his own mental stereotypes; he looks for analogies, for nationwide organizations, national conventions, national committees, party chairmen, bosses, rings,—and perhaps a Tammany Hall operating in Paris. Then he is bewildered to find that France has virtually none of these familiar phenomena at all.

A word of caution.

Now the first thing that the American student of French politics ought to do (if he can) is to banish all these preconceived notions from his mind. He should begin with a clean slate. He should approach his study of the French party system as though he were a man from Mars without the most elementary ideas as to what parties are or how they function, for it is only by approaching the subject in this way that he can hope to get a real understanding of it. The American and the French party systems have nothing in common. They employ the same terms in different senses. The political parties of the two republics are unlike in their organization, their aims, and their methods. "The system of party government in France, if indeed it can be characterized by such a term," says one of my colleagues, "is the most interesting and baffling feature of French political organization."[1] He is quite right. Baffling it certainly is to outsiders, but largely because they try to understand it without a knowledge of French political history and without any appreciation of the peculiar environment in which the game of Gallic politics is played.

A brief survey of party history in France.

To understand what political parties are, one must first know how they came to be. For this purpose it is not necessary to go farther back than the national assembly (or constitutional

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[1] Raymond L. Buell, *Contemporary French Politics* (New York, 1920), p. 1.

1. The contest between monarchists and republicans 1871-1877.

convention) which framed the constitution of the Third Republic during the early seventies of the nineteenth century. In that body, as has already been said, the monarchists controlled a majority, but they were badly divided and the republican minority managed to have its own way in many matters. Then came the election of 1876, the first general election under the new régime. This campaign developed into a pitched battle between republicans and monarchists, between those who desired the republic to endure and those who wanted to be rid of it at the first opportune moment. This, however, was only the broad line of cleavage, for there were other issues at stake and both sides found their ranks somewhat disrupted. Among the republicans there were three groups, calling themselves radical republicans, moderate republicans, and conservative republicans.[1] There were also three factions among the monarchists, but the division here followed dynastic lines into Bourbons, Orleanists, and Bonapartists. So the question was: Would these six groups unify into two, or would the divisions continue and be accentuated? The history of the past fifty years has answered that question. The French have developed the multiple party system.

An interpretive digression.

It is not surprising that they should have done so. Englishmen and Americans assume that the two-party system is the normal and natural one because it is the traditional system in their own countries and because it appears to have great advantages. But it is not the normal system in modern politics. In every country of continental Europe during the past half century there have been more than two parties, usually seven or eight of them. They run the whole gamut of political inclination from conservatism of the most extreme type to red proletarianism. This disintegration of partisan groups is not a by-product of any one political system, for it has been characteristic of continental monarchies and republics alike. It is to be found in Switzerland and in Spain, in Poland and in Portugal, as well as in France and Italy. Many competent observers have tried to explain the reasons for it, but their efforts have not been attended with much success. It is apparently due to a number of causes including the prominence of economic and religious issues in continental politics, the individualism of political thought, the lack of a consensus on the fundamentals of government, and the bondage of the European mind to political theories,—but most of it seems to be the outcome of political vicissitudes which are now past and gone. Past history influences present politics, always and everywhere. Why are our own southern states Democratic? Try to answer that question and see how far you will get without plunging into the political turmoils of seventy years ago. And so it is in France. Such a term as Extreme Right will mean nothing to those whose knowledge of French history begins with the great war.

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[1] Owing to the position which they had occupied on the floor of the national assembly during the drafting of the constitution these three groups of republicans were colloquially known as the extreme left, the left, and the left center. The first group had as its leader the brilliant orator, Léon Gambetta; the second included such stalwarts of moderate republicanism as Jules Grévy, Jules Ferry, and Charles de Freycinet. Grévy later became President of the Republic while Ferry and Freycinet rose to the post of prime minister. The third group has for its mentors a number of elder statesmen, among them Thiers and Dufaure, whose long experience in French politics inclined them to conservatism.

Defeat and decline of the monarchists, 1877-1881.

The general elections of 1876 gave the republicans a majority in the Chamber of Deputies and thus assured the republic a renewed lease of life.[1] Dufaure, a leader of the Left Center, became prime minister, but soon gave way to Jules Simon who was a member of the same group. It was during the latter's term that President MacMahon made his flank attack upon the new régime by dismissing a republican ministry, although it possessed a majority in the Chamber, and installing a cabinet drawn from the Right. To keep the new ministry in power MacMahon had to dissolve the Chamber, whereupon the voters decided against him at the polls and he was compelled to reinstall a republican administration. MacMahon's subsequent resignation of the presidency and his replacement in that office by a loyal republican brought France beyond the parting of the ways. With this change all immediate possibility of a monarchical restoration faded away. The monarchists, who had temporarily laid aside their dynastic differences and had supported MacMahon with all their strength, now accepted the inevitable. Reluctantly they became convinced that the republic was in the saddle, with its feet in the stirrups, and must be given a chance to ride. Although most of them continued to be royalists at heart, therefore, they thought it good strategy to cease calling themselves so and preferred to be known as conservatives, or merely as the "party of the Right." Yet monarchical sentiment died hard in France, and even today its spark of life has not been wholly extinguished.

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[1] In the Senate, however, the monarchists held control by a narrow margin.

The republican split of 1882.

The crisis of 1877 unified the republicans for the moment, but they did not stay united. Having triumphed over the monarchists they fell to quarreling among themselves. Léon Gambetta had been their leader in the successful balking of MacMahon's plans, and so long as the existence of the republic seemed to be in danger he was just the man to hold all its friends together. But Gambetta was a radical republican, too radical for the moderates. The latter distrusted his leadership and when he became prime minister in 1881 they would neither enter his cabinet nor give it their support. So Gambetta's ministry was speedily overthrown by an adverse vote of the Chamber and shortly thereafter he died. His radical followers, whose idol he was, could not forgive the other wing of the party. So they cut loose from the republicans altogether and set up an organization of their own which they called the Radical party.

Party divisions during the last two decades of the nineteenth century.

By 1882, therefore, the party groupings had come back to what they had been in 1849, and were much as they are today. First there was the Right, with two factions which differed only in that one was more reactionary than the other. Next to them came the Republicans of the Left Center and the Left, in other words the conservative and moderate Republicans. During their temporary alliance with Gambetta's Radicals the latter were sometimes called Opportunists, but after 1881 they preferred to designate themselves as Moderates. More recently they have been known as Republicans of the Left or the Republican Federation. Third, after 1881, there were the Radicals, constituting the members of the Extreme Left who had combined with the Republicans in 1877 and deserted them in 1881. Finally, the Chamber contained a few Socialists at this time, although hardly enough to constitute a political party.

These four groups, Conservatives, Moderates, Radicals, and Socialists, were by no means homogeneous groups, however, for each included men of considerable diversity in political opinion. No one of them, moreover, was able to command a majority in the Chamber, hence every ministry that came into power had to be formed by a process of coalition, and remained in power only so long as the coalition could be held together. This, in most cases, was relatively short time. During the last fifteen years of the nineteenth century there were twenty-two ministries, so that the average tenure was only about eight months. The Radicals and the Moderates sometimes joined in a "ministry of concentration" against the Conservatives, while the Conservatives and the Moderates sometimes joined in a "ministry of pacification" against the Radicals. Conservatives and Radicals, from the nature of things, never found coalition possible. In a few cases the attempt was made to construct a ministry out of homogeneous material (as in England) by drawing the ministers wholly from the Radical or Moderate ranks, but with no success. So the instability of French cabinets became proverbial and even Frenchmen began to complain that the principle of ministerial responsibility was being carried to an absurdity.

Five episodes in French politics during this period: 1. The Wilson scandal, 1886.

Five episodes in the political life of France during the past forty years have contributed to the demoralization of party discipline. The first was the Wilson scandal of 1886. A daughter of President Grévy married an expatriated Englishman, Daniel Wilson, and brought this son-in-law to live in the executive mansion. Sheltered under the same roof with Grévy, the Englishman was believed to exercise a sinister influence over the octogenarian chief of state. At any rate he was not reticent in telling his intimates about what he could do in the way of getting presidential favors for the right people. It presently developed, therefore, that various applicants had paid good money to shady go-betweens in the expectation that they would be given rank in the Legion of Honor. An investigation exonerated President Grévy from any share in the profits of this trafficking; he was merely the victim of a misplaced family confidence; but public sentiment could not now forgive his initial fault in having taken this miscreant from a nation of shopkeepers into the honored precincts of the Elysée. So the Paris boulevards rang with the frivolous refrain, *"Ah! Quel malheur d'avoir un gendre!"* and the old man had to go. Not without effort was he wrenched from the presidential chair, however, for he was obstinate and fond of the emoluments. At any rate the whole sordid episode was used by the Right to discredit the Moderate Republicans who had chosen Grévy to the chief executive office and from whose ranks he had risen to his post of leadership. The republic, they declared, was a synonym for corruption and venality.

2. The Boulanger agitation, 1885-1891.

Much more dangerous to the security of the republic was the Boulanger agitation which began about 1885 and did not end until 1891. Boulanger was a general in the French army. He was by nature aggressive and unscrupulous. Incidentally he was master of all the arts that demagogues know how to use, and in spite of an unpleasing personality he managed to acquire an immense popularity.

Boulanger first leaped into the newspaper headlines as an ardent jingo and militarist. His chief assets were a uniform, a black horse, a blond beard, and a ready flow of rhetoric; but his popularity soon became such that he was taken into the cabinet as minister of war. Thereupon he startled the world by suggesting that France should actively prepare for a war of revenge against Germany. Apart from the flagrant offensiveness of such an idea, emanating as it did from a high military source, there was the obvious fact (obvious to all intelligent Frenchmen) that a single step in this direction would have meant suicide for France. Germany would not have waited until France could make ready for a war of revenge. That has never been the German way of doing things. So the Berlin authorities lost no time in branding Boulanger as a menace to the peace of Europe and virtually demanding his exclusion from the ministry. The French government had no option but to accede, whereupon Boulanger was able to pose as a martyr and become the idol of the populace. The monarchists, especially the Bonapartists, flocked to his support, for they were anxious to see the Third Republic overthrown and did not much care who accomplished it. The Radicals, attracted by Boulanger's demagogic promises, joined him also. He sought to take the clericals into camp, and in some measure succeeded. Thus he found himself at the head of a strange coalition comprising extremists of both the Right and the Left—both ends against the center.

With this combination behind him he became, in 1888, an anti-ministerial candidate for election in several of the departments. (At this time, it will be recalled, elections to the Chamber of Deputies were conducted under the plan of *scrutin de liste*, or general ticket.) The ministry retaliated by removing him from the active list of the army and a battle-royal was on. Boulanger proclaimed himself a revisionist, and demanded that the constitution be overhauled.[1] At the moment it looked as though *"le brave général"* might become dictator of France, for he managed to stampede the electorate in one department after another and get himself elected by large majorities. Whenever a vacancy occurred in any department he would forthwith resign his seat and become a candidate, always with the same triumphant result. In January, 1889, he carried the Department of the Seine, in which Paris is located, and then openly challenged the ministry to hold a general election.

This victorious march of a demagogue on horseback naturally caused the Moderate Republicans to become greatly alarmed and they took drastic steps to deal with it. More particularly they abolished the plan of election-at-large and restored the district system, with a provision that no one might be a candidate in more than a single district. This put an end to the general's unbroken series of victories at the polls, but it would hardly have availed to crush the whole movement had it not been for Boulanger's own indiscretions and errors of judgment. By saying and doing many foolish things he speedily diminished his hold on the populace, and his star went on the wane as rapidly as it had risen. The ministry, being thus encouraged, tried to hale him before the Senate for impeachment. But the hero of the ballot-box did not wait to face his accusers; he fled to Belgium where he committed suicide in 1891. Nevertheless, the menace to the republic was a serious one while it lasted. There were times during the late eighties when this pinchbeck Cæsar, if he had possessed the ability and the nerve, might have seized the government and made himself master of it by a coup d'état, as Louis Napoléon had done in 1851; for he had the army with him. As it was, he anti-climaxed into oblivion.

3. The Panama Canal muddle.

The third stormy petrel of French politics during the closing decades of the nineteenth century was Ferdinand de Lesseps, the renowned engineer who planned and built the Suez Canal.

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[1] His plan for changes in the constitution was never elaborated in detail but it included a single chamber, increased powers for the president, and the use of the referendum in ratifying laws.

Having finished this great waterway to the Orient, he sighed for a new world to conquer. So De Lesseps promoted a company to construct a canal across the isthmus of Panama. Shares in the new company were eagerly bought by thousands of Frenchmen, but much of the money was wasted before any real progress in digging the canal had been accomplished. When rumors of this waste and mismanagement began to be noised abroad, the officials of the company attempted to hush them up by subsidizing newspapers and bribing members of the Chamber. To no avail, however, for the whole enterprise went bankrupt, and although strenuous attempts were made to refinance it they proved abortive. Thereupon the shareholders demanded an investigation and the government unwisely tried to conceal the true state of affairs, but a probe could not be avoided and in the end a sordid story of mismanagement and corruption was laid bare. The evidence connecting senators and deputies with this corruption was not altogether conclusive, but suspicions and innuendo made up for what was lacking in direct testimony, and several statesmen in both the Moderate Republican and the Radical groups found themselves under a cloud. Public confidence in the integrity of French politics was badly shaken. The Extreme Right, both monarchists and conservatives, endeavored to make political capital out of the mess, and to some extent they succeeded, but the election of 1893 proved them to be still in a minority.

4. The Dreyfus case.

Even before the smoke of this battle had cleared away, another scandal began to loom on the horizon and it eventually gave the statesmen of France a problem of large dimensions. This was the Dreyfus case which carried its echoes around the world during the closing years of the nineteenth century. Captain Alfred Dreyfus, an officer in the army, was put on trial and convicted by courtmartial in 1894 for having sold French military secrets to Germany. Dreyfus was a Jew, born in Alsace, a member of the French general staff, and intensely unpopular among his fellow officers. His conviction and sentence to exile did not attract much attention outside army circles for the moment, but presently Émile Zola and others came forward with the assertion that Dreyfus had been "framed" and railroaded to penal servitude in order that suspicion might be diverted from some non-Jewish officers who were the real culprits. This accusation naturally created a great public commotion and before long the Dreyfus case, with its Semitic and anti-Semitic implications, was convulsing France from the Channel to the Mediterranean. There were charges and counter-charges, investigations and interpellations, hearings and rehearings. The whole country split itself into Dreyfusards and anti-Dreyfusards, the former including the Jews, the intelligentsia, the socialists, the radicals and many moderate republicans. On the other side were most of the clergy, the army officers, the jingoes, the conservatives and the monarchists. As the controversy passed through its various stages it toppled ministries, wrecked sundry political ambitions, and had something to do with causing one president to resign. In the end Dreyfus was re-tried by courtmartial and again convicted, but the President of the Republic, on the advice of the ministry, granted him a pardon and restored his military rank.

5. The quarrel with the Church:

At the opening of the twentieth century France appeared to be enjoying a rest from the political scandals which had been convulsing the republic for nearly a score of years. But it was not long before a new question arose to accentuate the bitterness of partisan controversies. In reality it was not a new question, but an age-old one, one of the oldest in history, the question of the relation between church and state. France had wrestled with this issue on many previous occasions, but it now came forward in a somewhat different form. The genesis of this conflict dates back to the days of the great revolution or even earlier. Before the revolution the Catholic church was the established church in France; no other was recognized by the government. And the established church was very rich, having acquired great areas of land from which handsome revenues were derived, but which paid virtually no taxes. One-seventh of all the lands in the kingdom, it was said, had passed "into the dead hand" of the Church before 1789. Naturally the revolutionists looked upon this opulent institution as a fair target for their confiscatory decrees. It was rich; its clergy were a privileged order; it was part of the old régime. During the turmoils, therefore, the revolutionary authorities set upon the Church and confiscated all its lands. Then they attempted to make the bishops elective, thereby divorcing the hierarchy of the Church from the control of the Papacy, and failing in this

Its origin and earliest stage.

they ultimately tried to suppress the Church altogether. Thus was religion compelled to knuckle before revolution, as in Russia at the present day.

The Concordat of 1801.

When Napoleon Bonaparte assumed the reins of authority as First Consul, however, he realized the necessity of giving religion its proper place in a well-organized state, and he was also desirous of establishing amicable relations with the Vatican. So he concluded with the Papacy an agreement known as the Concordat. This treaty re-established the Catholic church in France but could not give back the confiscated lands, because these had been divided up among thousands of peasantry. So the government promised that the Church would be supported out of the public taxes. The priests were to be assigned by the bishops; the bishops were to be nominated by the government, but confirmed by the Pope. All other clerical appointments were to require the approval of the civil authorities. Napoleon was a statesman and diplomat, as well as a soldier, and nothing proves it more clearly than the foresight and skill which he displayed in this matter. His Concordat continued in force down to the beginning of the twentieth century (1906). It determined the relations of church and state in France for more than a hundred years.

Some of its effects.

Now this close association of church and state had its defects as well as its advantages. In a sense the bishops and priests were public officials inasmuch as their salaries were paid from the national treasury. The politicians were their paymasters. It was inevitable, therefore, that the Church should be drawn into politics as a measure of self-protection. That, at any rate, is what happened. And it also happened that most of the clergy became allies of the monarchists and imperialists. They were against revolution, and to a certain extent against republicanism. This was natural enough because the Church fared better under the two French empires than under any other form of rule. So long as France remained an empire or a monarchy, so long indeed as it seemed likely that the republic would give way to an empire or a monarchy, the anti-republican attitude of the clericals was no detriment to the worldly interests of the Church. But when it became apparent that the Third Republic had come to stay—then the issue of church and state entered a new phase.

The Church in the early years of the Third Republic.

The Ralliés.

During the years which immediately followed the establishment of the Third Republic, most of the clergy (and especially most of the bishops) continued to hope for a monarchical restoration. They supported MacMahon in his *attentat* of 1877, thereby incurring the wrath of Gambetta and his Radical Republicans. In this they did not differ much from thousands of educated Frenchmen among the laity. But after 1877 all hope of a monarchical restoration went a-glimmering, whereupon the clergy and those whom they controlled began to be reconciled to the republic, although with great reluctance. About this time a party group popularly known as the Ralliés was formed in an endeavor to unite allegiance to the Catholic Church with a firm devotion to the republic. Many ardent friends of the Church joined this group but it did not develop into a Centrum, as in Germany, or a Popolari, as in Italy. The reason is partly to be found in the unfortunate alliances which the Ralliés contracted with the monarchical element among the Boulangists during the eighties, and with the anti-Dreyfusards during the nineties. This greatly angered the Radicals who never ceased to repeat Gambetta's slogan: *"Le clericalisme—voila l'ennemi!"*

The Radical drive against clericalism, 1900-1906.

At the beginning of the twentieth century these Radicals, as it happened, came into power, and they were not long in forcing their anti-clerical program to the front. Their first move was not, ostensibly, the inauguration of a new policy; it simply consisted in ordering the enforcement of various laws relating to religious associations which had been widely honored in the breach. There were many religious associations in France which had no status at law, having not complied with the existing legal provisions. They were existing on sufferance of the civil authorities. In connection with the enforcement of the laws against these religious associations an investigation was also made, and from this investigation it appeared that many religious institutions were circumventing the rule against bequests to unauthorized corporations. It was also alleged by the investigators that the teaching orders were "undermining republican ideas among the youth of France,"—an accusation that probably had no more real basis than the charge which is so often made in our own day and in substantially the same form against the colleges of the United States.

The Association Laws, 1901

At any rate this enquiry led to the enactment of the Association Laws of 1901. In brief they provided that any association involving the taking of vows must obtain official authorization, failing which it was to be forthwith dissolved and its members forbidden to give any form of instruction. These laws stirred up a hornet's nest, but the ministry did not retreat. It proceeded to enforce the laws with more rigor than even the clericals had expected. Petitions for authorization were denied and hundreds of religious associations were harried out of the land. Ordinarily one would expect a strong revulsion in popular sentiment to have followed this severity, but the general election of 1902 gave the Radicals a renewal of their majority in the Chamber and emboldened them to still more drastic action.

The Law of Separation, 1906.

First they broke off diplomatic relations with the Vatican (1904). Then they proceeded to abrogate the Concordat, in other words they cut the church and state asunder. A Law of Separation was drafted, enacted, and put into operation in 1906. This law proclaimed the withdrawal of the government from all financial obligations to the Church and set it free to manage its own affairs, including the appointment of bishops, without civil interference. This latter provision of the law would have been hailed with satisfaction by the Clericals had it not been accompanied by the stipulation that the Church would get no money from the public treasury and also by the requirement that all Church property should be vested in the hands of lay corporations. The friends of the Church cried out that this was a breach of faith, that the Concordat could not be abrogated by one side without the consent of the other, and that France had gone atheistic. But the voters, at the general election of 1906, virtually ratified the separation.

The attitude of the Sacred Union, 1914-1919.

The Radical bloc held its own in France down to the eve of the world war. It disclosed no substantial weakening in its anti-clerical attitude during this time. But when the great emergency came so suddenly upon France in 1914 there was an immediate adjournment of all partisan animosities, and a coalition of all the leading parties was hastily formed under the name of the *Union Sacrée*. This coalition was naturally less hostile to clericalism than the Radical ministries had been and the same was even more true of the National bloc which succeeded it in 1919. The latter was able to dispense with the support of the Radicals and to form a sort of entente with the *Action Libérale*, as the lay supporters of clericalism now called themselves.

And of the National bloc, 1919-1924.

While this bloc remained in power, from 1919 to 1924, therefore, some progress in the restoration of cordial relations between the church and state was made. France and the Vatican resumed diplomatic relations in 1921. The Poincaré ministry, during these years, did not venture to propose the repeal of either the Association Laws or the Separation Law, but it relaxed the rigor of their enforcement. Where concessions to strong clerical sentiment could be made without changing the laws, it made them. In Alsace-Lorraine, for example, the Association Laws had not been enforced at the time of their enactment, these provinces being then in German hands. But when they were regained by France at the close of the war there arose the question whether the existing rules should be extended to these reconquered provinces, as to the rest of France. The Poincaré ministry moved cautiously in this matter and its hesitation, although appreciated by the Church, did much to revive the animosity of the Radical groups.

The alliance with the Right.

Thus the Church and its more militant supporters were once more drawn into too close an alliance with the Right. All over the country many priests and ardent churchmen gave their support to associations which were inspired and directed by leaders of the National bloc, and, in some cases, by avowed royalists. The *Action Libérale*, as the political organization of the clericals, let itself become altogether too friendly with the *Action Française*, which is the political organization of the monarchists. The Radicals, of course took due note of this, and in the campaign of 1924 they chanted in unison that the Church had once more allied itself with the Right and had become a foe of republicanism. They carried the country, and their triumph naturally meant a recrudescence of the old bitterness. Since its accession to power the *bloc des Gauches*, or Socialist Left, has reverted to the anti-clericalism of the decade which preceded the war. It proposes to enforce the laws to the letter, but whether it will be able to do so remains to be seen.

Its sequel.

A final word on this problem.

France is a Catholic country, overwhelmingly so. It may be wondered, then, why the electorate should so persistently support this relentless warfare upon the ancient Church. But to those who understand the Frenchman's point of view there is no occasion for wonderment. The masses of the French people are faithful to the Church of their fathers, but they do not for a moment concede that this fidelity should constrain them to support any arrangement which they deem bad for both religion and politics, an alliance of the two. They want the Church kept out of politics and politics out of the Church. But clericalism and politics have been intermingled in France for a very long time and it is not easy to put them at arm's length apart. In America the separation of church and state is taken as a matter of course. It is enjoined in the national constitution. The tradition of a free church in a free state has hardened here and in consequence the average American does not realize the far greater difficulties of the problem in France or Italy, where no such tradition exists.

The growth of socialism:

1. During the nineteenth century.

Another significant political development of the past forty years in French politics has been the growth of the Socialist party. There were some socialists in France as early as the Revolution of 1789 and during the first half of the nineteenth century their numbers seemed at times to be growing rapidly,—as in 1848, for example, when they took a considerable share in establishing the Second Republic. But this republic proved to be short-lived, and during the Second Empire the socialists were hounded out of the land whenever they showed themselves. With the fall of Napoleon III, however, the socialists once more came out into the open and renewed their activities, but they had to make headway against a very hostile public opinion because public opinion blamed them for the excesses of the Commune, an abortive attempt to establish communism in Paris immediately after the surrender of the city to the Germans in 1871. Many leaders of the Socialist party were banished from the country by the Republicans during the reaction which followed this lurid attempt of Louis Leblanc to do in Paris what Lenin did in Moscow some thirty-seven years later.

The split of 1904-1905.

Socialism did not achieve its first notable success in France until it captured the trade unions during the late seventies. This was not an altogether unqualified triumph, however, inasmuch as the unions contained men of widely varying opinions. Some were not socialists at all; some were socialists of a very mild type; some were extremists. No unity among those who called themselves socialists seemed to be possible. In the early eighties Clemenceau deserted with his followers and set up the Radical Socialist party. Later on another important schism took place. This time the outstanding difference of opinion related to the question whether a good socialist could enter a bourgeois ministry and continue to be a good socialist. The issue came to a crux in 1899 when Millerand, one of the prominent adherents of the party, accepted a post in the Waldeck-Rousseau cabinet, whereupon the socialist forces ranged themselves once more into two camps—those who favored participation and those who did not. The latter carried the day and set up a rule forbidding their members to participate in ministries with non-socialist parties. They also agreed upon a set of regulations for the guidance of the party in selecting candidates. This faction now took the name of Unified Socialists and definitely allied themselves with the International Socialist party. But a considerable minority—including such leaders as Millerand, Viviani, and Briand—declined to accept this decision. They and their followers seceded, and ultimately coalesced their forces (1910) into a party known as the Republican Socialists.

The present socialist groups.

There are now, accordingly, three socialist groups in the French Chamber of Deputies, namely, the Unified Socialists, the Republican Socialists, and the Radical Socialists. These names are extraordinarily misleading. The Unified Socialists are no more unified than either of the other groups; it is merely that they stand farther to the Left, in other words they are more radical than the others. Today they form the backbone of the *bloc des Gauches*. The Republican Socialist group is made up of deputies who are socialists of a less radical stripe; and finally, the Radical Socialists are the least radical of all. (This is one of the many paradoxes of French politics.) They are liberals, much more akin to the Liberal party in England than to the Labor party.

Present party divisions.

In the French Chamber of Deputies, as at present constituted, there are at least nine principal groups or party factions. But this does not mean that there will be the same number a year hence, or that they will be known by similar names. Both divisions and names are continually changing. At the extreme Right are the royalists and the members of the *Action Française;*

they now call themselves Independents. Next come the adherents of the *Action Libérale Populaire,* forming the clerical party, and various other conservatives. Together they are known as the Republican-Democratic Entente. Then there are several bourgeois factions with varying degrees of liberalism. They have their own appellations, which are rather meaningless to an outsider: Progressists, Republicans of the Left, Republican Democrats, and Radical Democrats. Further towards the Left come the Radical Socialists (who are not socialists at all and should rightly be called Radicals) the Republican Socialists, the Unified Socialists and at the extreme Left are the members of the communist party. Wholly outside these large divisions are smaller groups calling themselves by such various names as Dissident Socialists, Clemencists, Christian Democrats and even "Non-Inscrits."[1]

The two great blocs.

Let it not be assumed, however, that all these parties act independently and play themselves off against one another. No one of them ever controls a majority in the Chamber, hence coalitions are absolutely essential for carrying on the work of government. During the past ten years, moreover, there has been a well-defined tendency for all the parties except the extremists (the *Action Française* and the Communists) to coalesce into two opposing blocs. This tendency has been largely accentuated as a result of the war. On the day after Germany declared war on France the President of the Republic issued a call for unity in the Chamber, for the sinking of all political differences. Let France, he said, "stand before the enemy united by a common political faith." This call met with a prompt and patriotic response. All political factions laid aside their animosities and joined forces in the great bloc which came to be known as the Sacred Coalition (*Union Sacrée*). They agreed to support the Viviani ministry which was enlarged to include representatives of every party except the extreme Right. Even the Unified Socialists, despite their aversion to any part in a bourgeois government, now entered the sacred union.[1] Certain of their leaders became members of the ministry. A year later Viviani gave way to Briand as prime minister (October, 1915), and the new ministry included members of all the parties, including even one member from the monarchists. But no such union of all the factions could long endure. Party politics could be adjourned, but personal animosities could not. By 1917 the Unified Socialists had become dissatisfied with the coalition and most of them left it. The Clemenceau ministry, which finished the war and negotiated the peace, contained no members of the Unified Socialist party.

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[1] In the Chamber the present strength of the principal groups is approximately as follows: Independents (royalists, and extreme conservatives), 26; Republican Entente (three groups), 130; Republicans of the Left, Radical Democrats, etc., 125; Radical Socialists, 127; Independent (Republican) Socialists, 39; Unified Socialists (*Parti Socialiste*), 100; and Communists, 29. In the Senate there are only four principal groups, namely, the Right, the Republican Union, the Republican Left, and the Democratic Left (which includes Radicals and Socialists).

The parliamentary history of this period showed that the bourgeois parties could combine and hold together. At the conclusion of the war, accordingly, steps were taken to make such a coalition permanent by combining the middle (or Right and Left Center) groups into a coalition as the National bloc. Such a combination was effected and it carried the Chamber at the general election of 1919. For the next five years, moreover, this bloc held fairly well together. But the coalition of the middle parties in a national bloc virtually forced similar action by the more radical factions, further toward the Left, which had been excluded. These, accordingly, combined into a *bloc des Gauches* and the election of 1924 was fought between these two coalitions. The Left bloc was victorious and is in power today.

Will they remain?

Whether these two coalitions will hold together is difficult to say. The present indications are that they will. The existing system of proportional representation, while at first glance it might seem to benefit the smaller parties, does not really operate in that direction. It favors the integration of small parties into larger groups.[2] This system may be changed before long, since there is a good deal of dissatisfaction with it, but so long as it is continued there will be a strong incentive for the two blocs to remain intact. If one disintegrates, while the other continues united, the latter would be almost sure to win at the polls. On the other hand the tradition of party decentralization is so strong in France that it will not easily be broken down.

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[1] Their leaders took occasion to explain this surrender of the Marxist doctrine by declaring that it was a matter of life and death for France.

[2] See *above*, p. 457.

Party organization in the country.

We speak of these various elements as "political parties" because there is no other convenient English term to use. They are, in reality, something more than factions but something less than parties as we commonly use the term. They are precisely what the French call them—"groupements," that is, groups of elected representatives who bear some distinctive label, who may or may not be supported by regular organizations among the voters, who may or may not be pledged to some definite program, and who may or may not be subject to party discipline. Some of them bear a superficial resemblance to the organizations which we call political parties in England and the United States, for they have a nation-wide following; they have national committees, campaign funds, party platforms, and recognized leadership. They try to maintain discipline in their ranks. But others have nothing of the sort. The adherents of the extreme Right, for example, have no regular party organization; each deputy depends for his election upon his own efforts, and the members of his *groupement* are pledged to no definite program although in the Chamber they usually vote together. The candidates of the Unified Socialists (or *Parti Socialiste* as they now prefer to be called), on the other hand, are supported and financed by a regular organization; they are pledged to a common program, and they are under the centralized control. Between these two extremes there are all gradations of support and discipline. In some groups the deputies are responsible to party organizations or federations in their own departments, but not to any control or direction in the country as a whole. During his term of service, in fact, a deputy may leave one group and join another, so that the *groupements* are continually shifting in membership. Unless a deputy has been absolutely pledged (as in the case of the Unified Socialists) he is free to change his designation when he pleases, and he does not get himself branded as a renegade by doing so.

A contrast.

Here we encounter a striking difference between the French and the American conceptions of party regularity. At Washington, when a congressman persistently votes with the other side he is called an insurgent and sometimes ousted from his party altogether. A congressman cannot vote regularly with the Democrats and nevertheless remain a member of the Republican party in good standing. But in France that sort of thing has been quite possible. Deputies have changed their groups without changing their party affiliations. This, however, is not so common now as in older days, for the liaison between the party organizations in the country and the group organizations in the Chamber has become much closer than it was before the war. Some of the party organizations are now able to hold their deputies to a very strict regularity.

Party organization in the Chamber.

Each group in the Chamber of Deputies is organized and has its recognized leader or leaders. Each group holds caucuses occasionally; but the decisions of a caucus do not bind the members. Each group is represented, in proportion to its strength, on all the regular commissions, or standing committees of the Chamber.[1] The members of each group are seated together and they usually develop strong bonds of personal friendship, although there are always some individual rivalries and jealousies within the ranks. Each group has its own newspaper organs, sometimes several of them. The supposition is that the members of a group will vote unitedly, but as a matter of fact they rarely do so. There are almost always some defections, because the French deputy keeps one eye on his party allegiance and another on his own constituency. Having got himself elected to the Chamber his next job is to keep himself there. He must cultivate his own constituency by an unremitting attention to the interests of his supporters at home. He tries to build up a personal machine by obtaining favors for them. "Every kind of service," says Lord Bryce, "is expected from him. He must obtain decorations for his leading supporters, and find a start in life for their sons and sons-in-law. Minor posts in the government service and licenses to sell tobacco have to be secured for the rank and file." (Tobacco, in France, is a government monopoly.) To do all this he must not regularly antagonize the ministers if he can help it. So he finds good reasons for putting his constituency before his party on many occasions. It is only among the Unified Socialists, the Republican Socialists and the Communists that party discipline is strict enough to prevent individual defections.

Party leadership in France.

Every group in the Chamber has its leader or leaders, but they do not always lead. The deputies resent anything that savors of control. They want the privilege of exercising their own individual wills. No French statesman of the past twenty-five years has been a recognized leader of a majority in the Chamber of Deputies, as Disraeli and Gladstone were leaders in the House of Commons. No one has ruled the Chamber as Thomas B. Reed and Joseph G. Cannon ruled the American House of Representatives in their day. The deputies, in most of the groups, follow their leader so long as it suits them to do so. It is only among the Socialists and Communists, strange to say, that the realities of leadership are insisted upon. Strange it is, because these are the groups whose political philosophy is most averse to the exalting of one man above the other. The various parties in the Chamber have no whips as at Westminster and at Washington, no bosses as at Albany or Harrisburg, and no hinky-dinks who haunt the lobby telling the deputies what to do. There have been no such terms as *regularity* or *insurgency* in French politics although traces of both qualities are now beginning to appear. The political parties of the United States call themselves Republicans and Democrats; but their control is often monarchical in form. A French party may call itself Monarchist, but in organization and control it goes on the principle that all politicians are created free, equal, and independent. Nothing riles a Frenchman so much as to call him a political henchman of somebody else.

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[1] See *above*, p. 469.

Why France has so many parties.

More than twenty-five years ago President Lowell set forth what he believed to be the fundamental reasons for the disintegration of political parties in the French Republic.[1] In France, he pointed out, the Revolution of 1789 destroyed all faith in the political traditions of the past, but did not succeed in establishing a new political consensus. Between 1800 and 1870 six different forms of government trod closely on one another's heels, no one of them lasting long enough to acquire a firm grip on the faith of the people. Under each of these six political systems there remained many irreconcilables, that is, people who did not believe in the existing constitution but wanted to change it into something entirely different. Under a monarchy, the republicans tried to sabotage the mechanism; under a republic the monarchists did the same. Today, it is the communists who are irreconcilable.

1. The lack of continuity in French political history.

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[1] *Governments and Parties in Continental Europe* (Boston, 1897), Vol. I, pp. 104-142.

Now a reasonable degree of unanimity as to the general type of government is essential to the building of strong political parties. Men must at least agree upon the fundamentals. The party system, as we have it in England and in America, takes for granted that an overwhelming majority of the electorate is satisfied with the existing form of government,—a monarchy in the one case and a republic in the other. The parties merely differ as to the best methods of conducting the government under the existing form. But in France, until the past forty years or thereabouts, there has been no consensus on the form of government. It is only within the last four decades that the French people have even approached universal agreement on one fundamental point, that is, the superiority of a republican form of government. There has been unanimous consent on that matter among the people of the United States for over a hundred years. French political parties have been deficient in cohesion because French political history has lacked sequence.

2. Clericalism and Socialism.

Clericalism and Socialism have also been, to a degree, responsible for the outcome. They have cut across party lines and have broken them. Clericalism has not attained the same measure of strength in France as in Germany or in Italy, and chiefly because of its too intimate relations with ultra-conservatism. Yet it has helped to disintegrate the Right. Socialism, on the other hand, has helped to disintegrate the Left. It would not be a factor in party decentralization if all who call themselves socialists could agree and unite; but in France they have been unable to do so. They have contributed three parties to French politics.

3. The French temperament.

Last of all, an even more weighty reason is to be found in the French temperament. The majority of the Frenchmen, unlike the majority of Americans and Englishmen (not to speak of Irishmen) have no ardent interest in public affairs, or, to put it more accurately, they have relatively little interest in politics.[1] This is particularly true of the small farmers who make up half the total population. The French peasant will work himself into paroxysms over some real or fancied private grievance (such as a trespass on his little farm), but great controversies on matters of public policy often leave him unperturbed. It takes something more than a commotion in the Palais Bourbon to ruffle his serene disregard of things outside his own community. He does not learn much from generation to generation,—and he forgets nothing. "We don't like the English," said a French peasant to an American officer during 1918, when Gaul and Albion were allies in the field, "for they behaved very badly hereabouts during the Hundred Years' War"!

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[1] They are accustomed, as one writer puts it, to display *beaucoup de chaleur dans la discussion des intérêts privées, et de calme dans celle des intérêts publics.*”

With the dweller in the large cities it is of course somewhat different. He is more interested in politics as such; he is not so indifferent as the yokel, but he is just as individualistic. He reacts against doing as other men do. He wants to be his own boss in politics. Political independence is to him a self-evident virtue; by its exercise he demonstrates that he is as good as any other man. So he would rather vote for an individual than for a party, a principle, a policy, or a program. He desires to fit every issue into a *grande politique* of his own. This clearly independent and individualistic spirit of the French people, both in country and town, is not easily adaptable to a system in which political parties are firmly organized and strictly disciplined. The average Frenchman goes seeking for some political issue on which he may differ from his fellow citizens rather than for one on which he and others may unite.

Yet how readily the nation can solidify itself in the face of a great emergency! "Did there ever appear on earth," asks Tocqueville, "another nation so fertile in contrasts, so extreme in its acts, more under the dominion of feeling and less ruled by principle . . . so fickle in its daily opinions and tastes that it becomes at last a mystery to itself . . . qualified for every pursuit yet excelling in nothing but war . . . endowed with more heroism than virtue, more genius than common sense . . . the most dangerous nation of Europe, and the one that is surest to inspire admiration, hatred, terror, or pity—but never indifference?"

4. The system of parliamentary procedure.

Finally, the crumbling of parties in France has been due, in part at least, to certain features of parliamentary procedure, notably the older plan of organizing the committees in the Chamber, the interpellation, and the practice of putting government measures in charge of reporters rather than of ministers. Of course it may be suggested that these things are not the causes of party disintegration but the results of it. And there is some force to that contention. It is like trying to determine the cause-and-effect relation between crime and poverty. Each is a cause, and each is also a result of the other. Interpellations help to keep the parties in flux; but if any single party could become strong enough to command a clear majority in the Chamber the interpellation procedure would be of very little consequence. Under the semi-solidified bloc system it has, in fact, become less important than it used to be. So with the practice of placing reporters instead of ministers in charge of government measures when such bills are being debated. This divides responsibility and weakens leadership. Ostensibly the reporter is leading the Chamber, but his leadership is far from being akin to that of a minister when he takes charge of a government measure on the floor of the House of Commons. Still, if other things made for party soldarity, as they do in England, the French system of divided floor-leadership would not stand in the way.

The future of French parties.

Now what of the future? One thing seems highly probable from present appearances, namely, that the French party system will veer more and more towards that of England and America. The groups may continue, in name at any rate; but it is altogether likely that most of them will merge definitely and with an increasing degree of permanence into the two great blocs, Right and Left. French political leaders have learned in recent years the value of a nation-wide organization, with campaign funds, committees, and party discipline. Englishmen and Americans learned it a long time ago. Parties are the armies of statescraft. Victory does not always go to the biggest battalions, but to the ones that are best organized and best disciplined. The socialists have been teaching the bourgeois parties that the latter in their own self-defence must organize with equal thoroughness. It seems likely, therefore, that France in the not-far-distant future will become much better acquainted with the type of party organization which Americans now know as the machine, and which well deserves its name.

The most systematic treatise on the subject of French political parties is Léon Jacques, *Les partis politiques sous la troisième République* (Paris, 1913). A smaller and more recent survey, of real value, is Jean Carrère and Georges Bourgin, *Manuel des partis politiques en France* (Paris, 1924). Raymond L. Buell's *Contemporary French Politics* (New York, 1920) contains much interesting discussion of party organization, aims, and problems. Mention may also be made of a useful booklet by R. H. Soltau, entitled *French Parties and Politics* (London, 1922). There is an interesting chapter on the subject in E. M. Sait's *Government and Politics of France* (New York, 1920), pp. 327-379.

CHAPTER XXVII

FRENCH LAW AND LAW COURTS

> There is no better test of the excellence of a government than the efficiency of its judicial system, for nothing more nearly touches the welfare and security of the average citizen.—*Lord Bryce.*

The influence of feudalism on law.

Out of the chaos which followed the collapse of the Roman empire there arose and spread over most of Western Europe a great system of political and social relations known as feudalism or the feudal system. It was an institution based upon the tenure of land. The lord gave his vassals land and protection; the vassals gave him services and fealty in return. He, too, was the lawgiver within his domain and the fountain-head of justice. The laws were his laws, the courts were his courts. "Of all the phenomena of feudalism," a distinguished student of the subject has said, "none seems more essential than seigneurial justice," that is, the administration of justice by the feudal lord or seigneur.[1] This was the very essence of feudalism and its effects were far-reaching. The student of modern government is usually aware of the fact that feudalism rose, flourished in mediæval Europe, and ultimately fell; but he does not always remember that the influence of feudalism persisted long after the system itself had passed away. France, especially northern France, was the classic land of feudalism; it was there that the system became most deeply rooted and remained unchanged in its legal phases down to the time of the Revolution.

In England and in France.

Anyone who studies the legal history of England and of France from earliest times down to the beginning of the nineteenth century will be impressed by the striking contrast which marks the development of law and law courts in the two countries. These two nations are neighbors, with only a narrow strip of water separating them, but their respective legal backgrounds could not be more dissimilar if they were situated in different hemispheres. And the reason for this is not hard to explain.

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[1] F. W. Maitland, *Domesday Book and Beyond* (1897), p. 258.

It is to be found in the fact that England, at an early date, developed a royal power and a national spirit which mastered feudalism and feudal jurisdiction, gave the country a unified legal system, and established the supremacy of the royal courts.

The French *coutumes* in contrast with the English system of common law.

Feudalism was a disintegrating force. It divided the nation into principalities, dukedoms, baronies, and fiefs, each of which was an *imperium in imperio*. Save for a shadowy allegiance to the king, the feudal duke or count or baron was supreme within his own domain. Hence it was that every section of northern France developed its own distinct system of customary law, its own *coutume*, as it was called. These "customs," in due course, were put into written form and administered by the courts of the locality. The Coutume de Paris was the most notable among these bodies of local law, but there were hundreds of others, and they differed greatly in substance, in scope, and in the areas which they covered. The legal decentralization was so great that the traveller who went across France changed laws as often as he changed horses.[1] It was not so in England. There, in the early days, bodies of local customs had begun to develop; but the centralizing power of the monarchy proved too strong and they were submerged by the rise of the common law, which was the king's law, common throughout the whole country and uniformly administered by the royal courts.

The French legal system before the Revolution.

Down to the Revolution of 1789, accordingly, there was no system of common law in France. But this does not mean that there were absolutely no rules of law which applied uniformly throughout the whole country. Superimposed upon the *coutumes* was a body of edicts, decrees, and ordinances issued by the king. As the French monarchy grew in strength during the sixteenth and seventeenth centuries it became the practice to issue elaborate ordinances on various subjects, and in the reign of Louis XIV (1662-1715) a long series of them appeared, the *grandes ordonnances* they were called. Some of these royal edicts were veritable law codes; they dealt in a comprehensive way with such matters as commerce, wills, trusts, and judicial procedure; and they applied uniformly to the whole of France. Most of these great ordinances were issued on the authority of the king alone, for no elective parliament met in France from 1614 to the eve of the Revolution.[1] This whole body of royal legislation, however, covered only a small part of the entire field and hence did not serve to unify the legal system of the country.

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[1] In the southern part of France, the *pays de droit écrit* as it was called, the principles of Roman law were more generally and uniformly applied, but even here they were somewhat modified by local custom.

Very different, it may be repeated, was the course of development in England where the legal supremacy of the crown over the whole country was asserted by William the Conqueror and made good by his successors at a very early date. The kings sent their judges on circuit from county to county; these itinerant justices presided in the county courts and gradually established uniformity in the interpretation of both customs and laws. The Curia Regis, in its hearing of appeals, also provided a consolidating influence. Long before the close of the mediæval period England was able to place her law and her courts on a national basis while France did not manage to do so for several centuries thereafter. To the French people this was an enormous handicap, for a common law is one of the greatest unifying forces known to human society, second only to a common language.

The situation when the Revolution came.

The leaders of the French Revolution were well aware of the weakness which this legal demoralization engendered. They knew that it constituted a barrier to the creation of a truly national sentiment, that it stood in the way of the *fraternité* which the Revolution was seeking to create. Not only this but they felt very keenly that the *coutumes* were mediæval in spirit, antiquated, out of tune with the legal requirements of a modern age. Revisions had been made from time to time, it is true; but these revisions had not changed the spirit of the laws. Revising a *coutume* was like touching up the portrait of a mediæval knight and calling him a modern captain of industry. So the revolutionists decided that these bodies of customary law must go.

The abolition of the *coutumes* and the promulgation of the *Code Civil.*

In keeping with this decision the Revolutionary Assembly proceeded to abolish the greater portion of the old jurisprudence. Various general statutes, applying to the whole of France, were enacted instead. Then it seemed desirable to consolidate these new statutes, together with what was left of the old law, into a series of codes, and the revolutionary government set its hand to this enterprise; but it was no small task and for a time very slow progress was made. These revolutionary authorities, moreover, had matters of much greater urgency to deal with during the closing years of the eighteenth century. Hence it was not until Napoleon came into power that the work of codifying the whole jurisprudence of France was speeded up and finished. The Corsican went at the project with charactertistic élan, and completed it within a few years.

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[1] There was a requirement that every royal edict or decree must be registered by the Parliament of Paris before it could become valid. But this body was not a parliament in any real sense; its members were appointed by the king. And if they declined to register an ordinance (as they did on a few occasions), the king could come before the *parlement* and overrule the opposition by the use of a prerogative known as the *lit de justice.*

The far-reaching influence of the Napoleonic codification

Napoleon was very proud of the outcome. During his days of exile at St. Helena he referred to it as the greatest achievement of his age and one that would profit France more than a score of brilliant victories.[1] In this he was right, for his Code Napoléon has had an immense influence upon legal development in all parts of the world during the past hundred and twenty years. It has extended to the uttermost parts of the earth, to regions where his tricolor never flew. The present systems of civil law in Italy, Spain, Portugal, Belgium, and in nearly all the Latin-American states are based upon it. The civil codes of Germany, Japan, Greece, and many other countries have drawn upon it heavily. It has had a greater vogue and a wider influence than the common law of England. It has perpetuated and revivified much of what was best in the civil law of ancient Rome. "Its provisions," as Napoleon himself once boasted, "not only preach toleration, but organize it,—toleration the greatest privilege of man."[2] The emperor did not himself do the work, of course; but he selected the jurists and gave them their inspiration. When you go to Paris and visit the marble cenotaph where rest the bones of this astounding man, you will see emblazoned there the names of his great military victories—Marengo, Wagram, Austerlitz, Jena, Friedland and the rest. But you will find no mention of the greatest service that he rendered to France and to the world. Themis always yields place to Mars.

The other codes.

The Code Civil was only the first of a series. Within the next half dozen years four other codes were compiled and promulgated. These codes dealt with civil procedure, criminal law, criminal procedure, and commerce. Before Napoleon relinquished his imperial throne he had established throughout the whole of France a single system of law and legal procedure, covering all branches of jurisprudence. Revisions of this system have taken place at intervals, but the fundamentals remain unchanged. The Napoleonic codes were so comprehensive that they left relatively little to be covered by subsequent legislation. In France, as a consequence, there has been no such outpouring of statutes as has taken place in England, in America, and in the British self-governing dominions. This, however, is not an unmixed blessing, inasmuch as the codifying of a legal system conduces to rigidity. It is sometimes said that the codes have tended to stereotype the legal system of France and to take from it that quality of quick responsiveness to new economic needs which every progressive legal system ought to have.[1]

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[1] "My code alone, because of its simplicity, has done more good in France than the sum total of all the laws that preceded it." R. M. Johnston, *The Corsican* (Boston, 1910), p. 469.

[2] *Ibid.* p. 299.

A distinctive feature of modern French legal development:

This suggests reference to a distinctive feature of French law and legal interpretation. In Great Britain and in the United States the law is being constantly developed, expanded, and even altered by judicial decisions. Both these countries have built up great bodies of judge-made law. Although it is the theory of Anglo-American jurisprudence that the judges have no authority to change the law, but only to interpret and apply it, everybody knows that English and American courts do, in fact, make changes, often very considerable changes. One judicial decision advances a little upon another, and so on year after year, until there exists a wide gulf between the law as it is and the law as it was. Simple words and phrases receive new shades of meaning, and ultimately acquire new meanings altogether. This gradual modification of the law by judicial decisions has been made possible in England and the United States by the traditional respect which the courts always render to precedent. The doctrine of *stare decisis*,—the doctrine that a court will always be guided by previous decisions unless there is a compelling reason for reversal—has resulted in giving judge-made law a definite drift and direction.

No bondage to precedent.

But in France there is no such doctrine. On the contrary it is definitely understood that no court is under any obligation to be guided by its own previous decisions or even by the decisions of a higher court. Precedents may be cited in the French courts, and frequently are; but no great reliance is placed upon such citations, and the judges are free to disregard even the weightiest precedents whenever they feel so inclined. When a French tribunal gives a decision which directly contravenes some previous ruling, nobody says (as we do in America) that "the court has reversed itself." It has merely changed its mind or its attitude, in accordance with altered conditions, as every French court is expected to do. At the same time it is impossible for any court, in any country, to decide every case on its own individual merits, without some reference to what has already been adjudged in similar cases. The prestige of a judiciary demands that its decisions shall be reasonably consistent. It is essential to the proper enforcement of the law, moreover, that individuals shall know how the laws are going to be interpreted. So, while the doctrine of *stare decisis* has never had any formal recognition in France, and while no great body of controlling decisions has been built up as in America, there is nevertheless a judicial consensus on many fundamental questions. In other words, while the courts are free to disregard precedent, they have found in the nature of things that it is easier and better to maintain a reasonable standard of consistency in their interpretations of the law. Side by side with the written provisions of the codes they are gradually building up, therefore, a small body of judge-made laws which fills the lacunæ and clear up the obscurities.[1]

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[1] Some of the American states and the British dominions also have codes —civil codes, criminal codes, and codes of procedure; but they are not so comprehensive as those of France and their provisions are constantly being adjusted to new conditions by means of judicial interpretation.

Another distinctive feature:

No practice of declaring laws unconstitutional.

There is another feature of the French judicial system which the American student will do well to note. France has a written constitution, embodied in a series of constitutional laws, the provisions of which are in some cases very precise. And the French constitution, like the American, is ostensibly the supreme law of the land; hence any ordinary law which conflicts with its provisions is said to be unconstitutional and void. But no French court has the power to declare a statute unconstitutional and to annul it on that ground, no matter how repugnant to the constitution the statute may be. No such power is expressly given to the courts by the French constitution and it has not been acquired, as in the United States, by usage.

What happens, then, if the French Parliament passes a law which contravenes a constitutional provision? Suppose it should pass a statute providing that decrees of the President may be promulgated without the countersignature of a minister although the constitution expressly stipulates to the contrary? The question cannot be authoritatively answered because the two French chambers have never yet enacted a law in direct contravention of a constitutional requirement. It has been suggested that the President of the Republic might refuse to promulgate such a law if it were passed, and thereby withhold it from going into force; but it is highly improbable that any President would assume such a responsibility. Certain it is, in any event, that no court would assume the onus of interfering—and for a reason which will be explained in the next paragraph.

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[1] Raymond Poincaré, *How France is Governed* (New York, 1914), p. 241.

Why no such power can ever be developed as in America.

The constitutional laws of 1875 say nothing about the courts, how they shall be organized, or what their powers shall be. The whole matter is left within the jurisdiction of the French parliament to control, hence a conflict between the judiciary and the legislature in France could have only one outcome. The courts are created by law, and by law their powers could be curtailed. They might declare one law unconstitutional, perhaps, but parliament would assuredly see to it that they never did anything of the sort again. From the nature of its original authority, therefore, the French judiciary does not possess the independence, nor can it hope to develop the powers that pertain to the judiciary in the United States. It is not the habit of Frenchmen to look upon the judiciary as a separate branch of the government, distinct from the legislative and executive branches. They incline to regard the courts as mere administrative agencies, something like the post-offices or the prefectures.

Some other contrasts between the French and American judicial systems.

Some other general contrasts between the French and American judicial systems remain to be noted. In France all the courts are localized; the judges sit at a fixed place and never go on circuit as is the practice to a considerable extent in both England and America. In France, moreover, every court except the very lowest is provided with a bench of judges; in no case does a single judge hold court and give decisions. Every decision of a French court (save in the very lowest courts) must be rendered by the concurrence of at least three judges. There is an old French proverb: *juge unique, juge inique*, which expresses the public sentiment on this matter; but it has no justification, as the history of English and American courts has shown. A single judge is no less careful, or less fair, than a bench of judges. On the contrary he is more careful, for when a single judge renders a decision he assumes the entire responsibility for it, whereas such responsibility is dissipated when decisions are rendered by a vote of three judges against two, or of five against four.

The large number of judges.

As a result of this plural organization the total number of judges in France is very large—nearly six thousand in all.[1] In England the total number (apart from justices of the peace and stipendiary magistrates) scarcely exceeds one hundred. From time to time it has been proposed to cut down the excessive number in France by having single judges sit in the courts of first instance, but the collegial tradition has always proved too strong. Attempts have also been made to reduce the number of courts, of which there are far too many, but here again there has been opposition from the regions immediately affected. The deputies agree with the plan in principle, but not in its application to their own constituencies. It is as difficult to abolish a superfluous tribunal in France as to eliminate an obsolete army post or navy yard in the United States.

How they are selected.

In England and in the United States the judges are recruited from the legal profession. An appointment to the bench is regarded by most lawyers as the crowning stage of a successful career at the bar. In France this is not the case. Members of the French judiciary are regarded as the representatives of a separate profession, with no close relation to the active practice of the law. The young Frenchman, when he begins to study law, must decide whether he wants to be a lawyer or a judge, and must plan his studies accordingly. If he chooses a judicial career he does not hang out a sign and hustle for clients as soon as he has finished his course. He goes at once into service as a subordinate court official, sometimes without pay. Then, if he displays ability, he may become a *procureur* (official prosecutor), or a substitute judge in a court of the first instance. In time, if he earns promotion, he will become a regular judge of this court, and eventually the presiding judge of it. From this position he may be named as a *conseiller* on one of the twenty-seven courts of appeal, and if he sufficiently distinguishes himself among his colleagues there he will ultimately attain the zenith of his aspirations by donning the red robe which is the insignia of a councillor of the court of cassation.

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[1] In the lower courts they are called *juges*, in the higher courts they are called *conseillers*.

In other words, the French judiciary is regarded as a branch of the civil service for which a special form of training is required. This is quite contrary to the tradition in the United States where any lawyer is deemed fit to be a judge if he can get himself appointed or elected. There are no elective judges in France. Great as is the influence of democratic theory in the abstract, French public opinion would not countenance an elective judiciary. All judicial posts except the very lowest are filled by promotion. An elective judiciary was established during the Revolution but it proved a failure and Napoleon abolished it in 1804. No serious attempt to revive it has been made under the Third Republic. The French people are not so obtuse as to blink the fact that the effective administration of justice, as between man and man, is something that calls for specialized skill and experience. They know that these qualities cannot be regularly obtained by any system of popular election and they have not committed the folly of trying to secure them in that way. //

The dual system of law and courts.

Most conspicuous of all differences between the French and American legal systems, however, is the separation which the former makes between ordinary law and administrative law, between ordinary courts and administrative courts. Neither in England nor in the United States is any such general separation made. It is sometimes said that France has one system of law for the ordinary citizen and another for the public official,—that the public officials are a favored class in that they have the right to be tried by special courts and are not amenable to the ordinary tribunals. This, as will be shown in the next chapter, is not a fair way of stating the matter. The system of administrative law redounds to the benefit of the ordinary citizen and not to his disadvantage. It affords the Frenchman a measure of redress against his government which the American citizen does not obtain. This is a matter that must be reserved for later and more ample discussion, but it should be noted at this point that France has two distinct sets of courts, known as ordinary courts and administrative courts, each with its own judges, jurisdiction, and procedure.

The ordinary courts: 1. The justices of the peace.

The ordinary courts administer the civil and criminal law. The lowest among these ordinary courts in France, as in England, are the local courts presided over by the justices of the peace (*juges de paix*). There is one such court in every canton.[1] It has jurisdiction in civil controversies where the amount involved is small, and in criminal cases of a minor sort. The procedure is informal and inexpensive, much like that of the "small claims courts" which function in many American cities. The *juge de paix* spends most of his time straightening out misunderstandings. His main business is to prevent lawsuits, not to try them. To this end he has a whole series of duties relating to land boundaries, minor damages to property, disputes between landlord and tenant, attachments on small salaries, and accidents to workmen. It is not so much a knowledge of the law as a knowledge of human nature that the French justice of the peace needs in his work.

Although this is the lowest ordinary court in France, it is by no means the least important. These three thousand justices handle nearly a million cases a year and it is from them that the people at large get their conception of what justice is. Relatively few of their decisions are ever appealed. The justices are appointed by the President of the Republic on recommendation of the minister of justice, but no one is eligible unless he has obtained his first law diploma and has served in some subordinate judicial office. An exception is made in the case of those who have held certain elective offices (such as that of mayor) for more than ten years. The justices are paid reasonable salaries and are safeguarded against dismissal except for proper cause.

2. Courts of the first instance.

Next come district courts, or courts of the first instance. There is at least one of these in every arrondissement and it is always equipped with several judges, usually five but sometimes as many as fifteen. Where there are more than six judges the court may divide itself into sections or chambers. The judges sit together, one of them serving as presiding judge, and render their decisions by concurrence. They are assisted by a public prosecutor (*procureur*) who conducts the cases before the court. The courts of the first instance hear appeals from the decisions of the justices (where sums larger than three hundred francs are involved; otherwise the decision of the lower court is final), and have original jurisdiction in all civil controversies no matter how large the amount involved. They also have original jurisdiction in a limited range of criminal cases. But all their decisions in criminal cases, and in civil cases involving more than 1500 francs, may be appealed to the higher courts. The district courts do not use juries.

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[1] A canton is a judicial division of the arrondissement. There are 3019 cantons in France.

3. The courts of appeal.

Then there are the courts of appeal, twenty-seven of them in all.[1] Each court of appeal is made up of a large bench of judges and its jurisdiction extends over a judicial province which contains from one to seven of the French departments. The court of appeal at Paris, for example, has jurisdiction over the Department of the Seine and five other departments. These courts sit in sections, each section having at least five judges, one of whom presides. There is a civil section, a criminal section, and an indictment section (*chambre d'accusation*) which performs the functions of a grand jury. Each section of the court of appeals is assisted by one or more public prosecutors known as *procureurs-généraux,* also by various assistant prosecutors, marshals and other court functionaries.[2] No juries are used by the court of appeals in any of its sections. The work is confined almost entirely to the hearing of appeals from the courts below, more particularly to the hearing of arguments on points of law. In most instances the decision of a court of appeals is final.

The methods of pleading.

The procedure in these courts of appeal seems strange to an American lawyer. The case is prepared, both sides of it, by *avoués* or solicitors. They make out declarations and replies, rebuttals and replications, for which they charge their clients a stiff fee, and which they exchange by means of pompous *huissiers* or uniformed bailiffs whose services are also expensive. The judge waits until the lawyers have finished this interchange of documents and then listens to oral argument on such points as are still in disagreement. He does not see the clients, for the clients do not come into court. They may be purely fictitious persons so far as the judges are concerned. In some lawsuits they have been. No oral evidence is presented. When the arguments have been presented the judges confer and try to reach a decision. All this, of course, does not apply to criminal cases, the procedure in which will now be explained.

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[1] One for Algeria, one for Corsica, and twenty-five for France.

[2] In France all these *procureurs, procureurs-généraux, avoués, huissiers,* etc., are regarded as members of the judiciary. The regular judges are known as the *sitting* judiciary, while the others make up the *standing* judiciary. This is in truth a pragmatic way of differentiating them.

4. The courts of assize.

On a level with the courts of appeal, but dealing exclusively with criminal cases, are the courts of assize. There is one such court for each of the eighty-nine departments. The courts of assize do not form a separate rung in the ladder of ordinary courts but are specially created four times a year for the holding of criminal sessions. The presiding judge is named from one of the courts of appeal by the minister of justice; his two associate judges are drawn either from a court of appeal or from a district court. This is the only French court which uses a jury, and it sits with a jury in practically all cases. The trial jury in France (as in England and America) is composed of twelve persons chosen by lot from a panel of citizens, but its functions are somewhat different, and for good reason because the jury system is not indigenous in France. It was transplanted from England and has never taken firm root. Its use is a concession to the shibboleths of individual liberty, but as an institution it has never aroused much enthusiasm among the French. Hence it is never used in deciding civil controversies; it has been reserved for the trial of serious crimes only. Even at that it does not appear to be functioning very well. A recent writer on French government condemns the system unsparingly and declares that in many cases the courts might as well "allow justice to depend upon a throw of the dice as upon the verdict of the jury." Composed exclusively of petty shop-keepers, he goes on to say, "the jury often shows extreme severity towards attacks on property and a surprising indulgence to personal assaults."[1] All in all, this jurist regards the jury system as a mere concession to an "unalterable superstition" which actually works havoc with the sound administration of justice. Be this as it may, however, the decisions of a French jury are final on all matters of fact. On matters of law the criminal chamber of the court of cassation has the last word.

The jury system.

5. The court of cassation.

The supreme court of France, for all ordinary cases both civil and criminal, is the court of cassation.[1] There is but one court of cassation for the whole of France, this centralization being designed to ensure uniformity in the interpretation of the laws. It sits in Paris and has a bench of forty-nine judges, including a first president, three presidents of chambers, and forty-five councillors. In addition there is a *procureur-général* and several assistants. Like the courts of appeal this highest court does its work in sections or chambers. Two chambers deal with civil and one with criminal cases.[2] The court of cassation has no original jurisdiction; all cases come before it on appeal from some court below. It cannot change the verdict of a lower court, but must either confirm the decision or refer the case back for a new trial.[3] Since appeals involving the same legal questions are being constantly brought before the court of cassation, this tribunal is gradually building up a body of case-law despite the fact that it is not bound by its previous decisions. It has been mentioned, but it will bear reiteration, that although the court of cassation is the supreme court of France in all ordinary cases, it has no power to declare any law unconstitutional.

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[1] Joseph Barthélemy, *The Government of France* (New York, 1924), p. 176.

Its prestige and procedure.

The prestige of this court is very great. A seat on its bench is the lofty ambition of all judges and *procureurs* in the lower courts, even though the salaries are smaller than those paid to judges in the lowest state courts of America. The procedure used in the court of cassation is quaint, having come down without much alteration from the great ordinances of Louis XIV. The Napoleonic code of procedure left it substantially untouched. The contending parties submit briefs in writing; then the actual pleading consists of a short oral commentary on the principal issues. The merits of the controversy are then studied by a single judge who submits his finding to the whole chamber. There are no long arguments before the court as a whole.

Special tribunals.

Mention ought to be made of three special tribunals which stand outside the hierarchy of ordinary courts but whose work is of considerable importance nevertheless. The first of these are the commerce courts (*tribunaux de commerce*) which decide controversies arising out of commercial transactions. They are established in the cities and the judges are selected by the merchants of the municipality. In Paris there are about 47,000 persons qualified to participate in the selection of these commercial judges. Appeals from the decisions of the commerce courts go to the court of appeals. In the second place there are courts of arbitration (*conseils de prud'hommes*) which are semi-judicial bodies made up equally of employers and employees with a justice of the peace presiding. They settle, or try to settle, labor disputes—especially those connected with wages and wrongful dismissals. An appeal may be taken to the regular civil tribunals in any case where the amount involved is more than five hundred francs. Below this amount the decisions of the *prud'hommes* are conclusive. Finally, there are special courts for the fixing of compensation when private property is taken for public use. These courts are composed of a jury alone—sixteen citizens drawn for the purpose. They report their findings to the civil court which promulgates the award. In America such matters are heard by the regular courts.

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[1] The name comes from the verb *casser*, to cancel or annul.

[2] In the case of the civil sections, one section (*chambre de requêtes*) examines the appeal to determine whether it is worth consideration. If its decision is affirmative, the appeal then goes to the other civil section; otherwise it is thrown out. By this method frivolous appeals are discouraged.

[3] It does not, as in America, send the case back to the same court for retrial, but to a different court of the same grade.

Appointment of the judges.

In all the regular courts (but not including those mentioned in the foregoing paragraph) the judges are appointed by the President of the Republic on the recommendation of the minister of justice. The latter is not free to recommend whom he pleases but must follow certain rules which have been laid down by presidential decree. As regards appointments to the lower courts the minister must make his selections from among those who have passed special examinations or who have had a certain amount of experience either as prosecutors or in some other official position. For appointments to the higher courts the recommendations must be made from among the judges of the lower courts in accordance with a table of promotions.[1] It is provided, however, that the minister may depart from the *tableau d'avancement* in certain cases.[2] This system of appointment and promotion, which went into force in 1906, has greatly diminished the activity of the politicians in relation to the French judiciary, but it has not yet eliminated this activity altogether.

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[1] This does not apply to the *juges de paix* who are rarely promoted. Judges of the courts of appeal and of assize are promoted from the courts of the first instance; judges of the courts of cassation are selected from the courts of appeal.

[2] There is a separate table of promotions for each higher court. It is prepared anew every year by the minister of justice with the help of a judicial commission and is based upon merit as well as seniority. The

Their tenure.

Most judicial appointments in France are made without limit of time. In all the courts, except the lowest and the highest, the judges are presumed to hold office during good behavior or until they reach the age limit.[1] Any accusation of misconduct against a judge (save in the case of its own members) is heard by the court of cassation which may render a verdict of removal. The court of cassation has no such legal protection; its members may be removed by the President of the Republic at any time, but in practice removals do not take place without good reason. By law and by usage, therefore, security of judicial tenure is well established in France. But it is not guaranteed by the constitution as in the United States. There is nothing to prevent wholesale dismissals under the guise of a law for reorganizing the courts. Such purgings (*épurations*) of the judiciary have at times taken place, but not in recent years, and public sentiment is now so adverse to the practice that nothing of the sort is likely to occur again, unless the royalists or the communists manage to get control of both chambers.

A survey of criminal procedure in France.

The procedure in the ordinary courts of France differs greatly from that followed by the courts of Great Britain and the United States. To explain all the differences would lead one into a long and technical narrative, of no interest save to specialists. But the more outstanding contrasts may be made clear, perhaps, by giving the outline of how a criminal case runs its course in the French tribunals. This is not to imply that in France (or in any other country for that matter) all cases are tried in exactly the same way. The procedure is not absolutely fixed and may be varied somewhat as the occasion demands. But what follows will serve as a fairly typical illustration.

1. The *enquête* before the *juge d'instruction.*

Let us suppose that some serious crime is committed and that an arrest has been made by the police.[2] The prisoner is

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minister must fill at least three-fourths of the annual vacancies from this list; for the remaining one-fourth he may go outside.

[1] The *juges de paix* are not regarded as judges within the meaning of this provision. There are special rules, prescribed by a law of June 14, 1918, relating to their appointment and removal. Nor do the rules against irremovability apply to the administrative courts (see *below*, p. 540).

[2] A distinction is made in France between *contraventions* or *délits* (minor offences) and crimes of a more serious character. The former are dealt with summarily by a *juge de paix*.

first taken before an examining officer known as a *juge d'instruction.* Despite his title, this functionary is not a judge at all but a preliminary inquisitor who makes no finding of innocence or guilt. He merely holds an enquiry during which he closely questions the accused person. This enquête is not a public hearing, but the accused is permitted to have his counsel present. Witnesses are summoned, and all phases of the case are gone into. The *juge d'instruction* puts the whole thing in writing, and if he finds that there is sufficient ground for holding the accused he refers the case to a chambre d'accusation which is the indicting body in France, there being no grand jury system as in the United States.[1]

Its nature

In any event the preliminary enquête is thorough and searching. It leaves no portion of the accused's life-history unrevealed. Complaint is often made that there is too much of what we call the "third degree," too much grilling and browbeating of the accused in the endeavor to force a confession of guilt.[2] On the other hand there is an obvious safeguard against too much of this so long as the prisoner is entitled to have his counsel present at the enquiry.

The indictment.

When the case comes before the chamber of accusation the latter does not hear further evidence but merely examines the record. It may then order the accused to be discharged, or it may frame an indictment (*acte d'accusation*) against him. The actual work of drawing this document is done by the prosecuting officers of the court. Unlike the presentments or indictments returned by an American grand jury, the *acte d'accusation* is not a simple statement of the charges against the accused person, but a voluminous recital which may (and often does) include a vehement tirade against him, his character, his antecedents, and even his relatives. It sounds like a prosecuting attorney's concluding address to an American jury in a criminal trial. Yet no one should conclude from this procedure that innocent persons run a greater risk of indictment in France than in the United States. Quite the contrary. In the United States the power to indict rests ostensibly with the grand jury, a body of laymen chosen by lot, but they are usually susceptible to the influence of the district or state's attorney. Sometimes they virtually do whatever he tells them to do, and he, being an elective official, is not always immune from political pressure. In France the power to indict rests with a chamber of at least five judges, who are appointed by the chief of state and are irremovable except for good cause. All five judges must sign the indictment. These preliminaries, moreover, are pushed through more promptly in France than in this country. The accused must be brought before a *juge d'instruction* within twenty-four hours, and the chamber of accusation ordinarily does its part within the next fortnight.

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[1] It will be recalled that the *chambre d'accusation* (or, to give its full title, the *chambre des mises en accusation*) is one of the sections of a court of appeal.

[2] A vivid portrayal is given in Eugéne Brieux's drama, *La Robe Rouge,* Act I, Scene 7, cited by Professor J. W. Garner in his article on "Criminal Procedure in France," *Yale Law Journal,* Vol. xxv, p. 260.

The trial: Selection of the jury.

After his indictment the accused is brought to trial in the court of assize. This court is composed of a presiding judge (assigned from one of the courts of appeal) and two associate judges. The jury panel contains thirty-six persons and their names are drawn from an urn one by one. The prosecution and the defence may challenge any juror, with or without cause, until there are no more names in the urn than there are jurors to be selected. Thereupon no further challenges are permitted. When a long trial is anticipated, it is the practice to select, in addition to the twelve regular jurors, one or two extra jurymen who sit with the others and are available for service in case a regular juror is taken ill. As a rule it does not take long to empanel a jury in France, never more than a few hours. In America, as everyone knows, it may take several days, and sometimes more than a week. The American jury panel may contain a hundred names, and when it is exhausted we merely prepare a new one.

The judge's interrogatory.

When the French jury has been chosen, the presiding judge explains the accusation but does not ask the prisoner to plead. Nor does the prosecution begin the trial in American fashion by giving a review of what it expects to prove. Instead, the presiding judge begins his *interrogatoire*, which is an examination and cross-examination of the accused. This may continue for hours, or even for days. Meanwhile the public prosecutor, as well as the counsel for the defence and even the associate judges, are supposed to sit in silence. All this, bear in mind, before any of the witnesses are heard! When the presiding judge is skilful and impartial the interrogatory provides a quick and effective way of bringing out the essential facts. But many of the judges are neither skilful nor impartial, hence the interrogatory often develops into a heated colloquy between the prisoner and the bench. This phase of judicial procedure has been vigorously criticised in recent years and there is a widespread demand that it be abolished. Police officers complain that when a judge grills an accused person too severely the latter gets the jury's sympathy to such a degree that he is sometimes acquitted in the face of the strongest evidence.

Presentation of the evidence.

After the judge has finished his interrogatory, the witnesses are called. Usually those for the prosecution are called first, then those for the civil party (if there is one), and finally those for defence.[1] This is the order laid down in the code of criminal procedure; but it is sometimes varied and the witnesses are called in irregular order, so that the jury may not know which side they are testifying for.

Examination of witnesses.

The examination of the witnesses is conducted in a way wholly different from that to which we are accustomed. Each witness, on being sworn, is instructed to tell all he knows. The code expressly provides that a witness must not be interrupted, but the court of cassation has ruled that if he rambles too far from the case the presiding judge may call him to order. In a French court witnesses are *heard*, not *questioned*. So everything goes as evidence at a French assize—hearsay, rumors, opinion, suspicion, animosity, invective, anything that a witness chooses to emit. He may tell what he saw, what somebody else saw, or what somebody else heard somebody say he saw. Accordingly there are no wrangles as to whether certain evidence is admissible or not. Anything is admissible if the presiding judge cares to listen to it, for the code provides that he may admit "whatever in his opinion will conduce to the ascertainment of the truth."

The cross-examination.

Then, when the witness has had his say (without interruption) the presiding judge may question him. This he proceeds to do without first giving the lawyers a chance. When the judge has finished with the witness he must permit the public prosecutor to ask questions directly; but the counsel for the defence, and for the civil party if there is one, are never allowed to examine or to cross-examine in this way. They must ask their questions through the presiding judge, and the latter may decline to put any question that he deems irrelevant. Needless to say this arrangement greatly abbreviates the time taken in the examination of witnesses by counsel. Jurors are also allowed to ask questions, but they rarely do so. Nor is it usual for the two associate judges to question the witnesses, although they have that privilege.

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[1] The term "civil party" requires a word of explanation. In France anyone who has been injured in person or in property as the result of a crime may enter the case as a *civil party*. For example, a truck collides with a taxicab and kills a passenger therein. The truck driver is indicted and the state prosecutes. These are the two parties to the criminal side of the case. But the owner of the demolished taxicab may enter as a *civil* party, claiming damages. In the United States he would have to enter a separate civil suit which would be tried independently.

The addresses of counsel.

When the witnesses have all testified, the public prosecutor delivers his address to the court and calls for a verdict of conviction. The counsel for the civil party and for the defence follow him in the order named. The prosecutor may then speak in rebuttal; if so, the counsel for the defence must be given the final word. The code expressly requires this, and it naturally gives the accused an advantage. As a rule the concluding addresses are not lengthy. The presiding judge does not "charge the jury" as in America; he does not sum up the case and call attention to the real points at issue. Nor does he ask the jurors to return a verdict of guilty or not guilty. He merely submits to the jurymen a list of questions which they are to answer Yes or No. One of the questions always asks the jurymen whether, in the event of their finding the defendant blameworthy, there have been any extenuating circumstances. Sometimes the list of questions is long and complicated, and for this reason the answers which the jurors give are occasionally inconsistent with one another.

Submission of questions to the jury.

Reaching the verdict.

The jury retires from the courtroom and frames its answers by majority vote, a secret ballot being taken on each question. When any matter requiring the advice of the presiding judge arises in an American trial it is the practice to bring the jury back into the courtroom where the judge gives his explanation in public. In France a different plan is pursued. There the presiding judge goes to the jury room, accompanied by the public prosecutor and the counsel for the accused. Not infrequently he is summoned for the purpose of telling the jurors what penalty he is likely to impose in case the answers are adverse to the defendant. This shows that French jurors have not caught the spirit of the jury system. They desire to do more than serve as mere agencies for the determination of the facts. The law prescribes that a jury has nothing to do with penalties; but French jurymen often insist upon influencing penalties in a roundabout way. They do not like to determine the verdict without a prior assurance that the punishment will fit the crime.

Functions of the judges.

On the basis of the jury's answers the three judges announce the verdict and impose the sentence. In case of disagreement among themselves they decide by majority vote. In general they must act in accord with the jury's answers; but if the jury has voted six to six or seven to five on any question the three judges are free to frame a verdict of acquittal (but not a verdict of conviction), provided they are themselves unanimous. The code of criminal procedure also stipulates that a lenient sentence must be imposed whenever the jurymen report that they have found extenuating circumstances. French juries are notoriously partial to defendants. There is widespread complaint that they readily condone offences of a political character, crimes committed by strikers, cases that come under the unwritten law, and indeed most of the so-termed *passionnel* offences. This leniency is said to be more pronounced in Paris and the other large cities than in the rural districts.

Appeals.

From the verdict and sentence at the assizes an appeal may be taken on any issue of law to the court of cassation. This court, under ordinary circumstances, has no power to set aside the verdict; it merely orders a new trial and this rehearing takes place in some court of assize other than the one in which the original trial was conducted. In certain evenualities, however, the court of cassation may set aside the verdict of the assize without ordering a new trial.[1]

Merits of French criminal procedure.

Thus a criminal trial in a French court is an investigation, an endeavor to ascertain the truth. It is not a forensic battle between two opposing platoons of learned counsel. The rule that questions must be asked through the mouth of the presiding judge has had the effect of discouraging frivolous enquiries on the part of the defendant's attorneys. The practice of giving the presiding judge full discretion as to the range of admissible evidence serves to eliminate the long wrangles and protests and "exceptions" which take place in the criminal courts of the United States. The requirement of a majority instead of unanimity in reaching a decision on any point has the advantage of avoiding deadlocks. There can be no such thing as a "hung jury" in France. Furthermore, there is a good deal to be said for the French plan of submitting to the jury a series of definite questions as contrasted with the American practice of insisting upon a categorical verdict, for it gives the jurymen something specific to work upon. In America we avow that juries determine questions of fact alone; but what we actually require them to do is to fix guilt or innocence, which is by no means exactly the same thing.

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[1] For example, where a defendant has been convicted of homicide and it subsequently appears that the supposed victim is still alive.

Some obvious defects.

On the other hand there are some features of French criminal procedure which are wholly out of consonance with Anglo-Saxon legal traditions and hence would not be tolerated by public opinion in the United States or in England. A prisoner may be required to give evidence against himself. A witness, moreover, is not permitted to refrain from answering any question on the ground that his answer might be self-incriminating. Written evidence may be received and accepted against an accused person without giving him an opportunity to cross-examine those responsible for it. Finally, the custom of admitting hearsay as evidence is one that ought not to be tolerated in any well-ordered judicial system.

Civil procedure.

The procedure in civil cases is necessarily somewhat different from all this because juries are not used in such controversies, nor is there a public prosecutor. Much of the evidence is submitted in writing. The *avoués* or lawyers on each side present their arguments to the judges who sit *en banc*, and the latter give judgment by majority vote. Civil trials move more rapidly in France than in the United States. Less heed is paid to technicalities. The right of appeal is more restricted. Yet the French judicial system has not found much favor among English or American jurists, which is partly because so few of them understand it. One sometimes hears an American lawyer remark that "in France a man is deemed guilty until he proves himself innocent"—and the Dreyfus case is then cited as affording an illustration. There is no basis for any such assertion

The presumption of innocence is the same in both countries. And Dreyfus was tried by courtmartial, not by one of the regular criminal courts, hence his case has no relevance in any discussion of ordinary judicial procedure.

A. W. Spencer's *Modern French Legal Philosophy* (Boston, 1912) gives the student a good idea of the French legal system in general. The best short discussions of judicial organization and procedure (in English) are the articles by Professor James W. Garner on "The French Judiciary" in the *Yale Law Journal* (March, 1917), and on "Criminal Procedure in France," in *Ibid,* February, 1916. The *American Law Review* (Vol. XLVI, *passim*) contains an interesting comparison of French and American judicial methods.

CHAPTER XXVIII

THE SYSTEM OF ADMINISTRATIVE JURISPRUDENCE

The French system of administrative law, and the very principles on which it rests, are quite unknown to English and American judges and lawyers.—*Albert Venn Dicey.*

The preceding chapter has been devoted to the codes and the ordinary courts of France. There is another branch of the law, and another set of tribunals, both of which deserve attention, for they play a considerable part in the jurisprudence of the Republic. We hear very little of administrative law and administrative courts in Great Britain and America, but this is not because both countries are lacking in jurisprudence of this nature. England and the United States alike have systems of administrative law; they also have administrative commissions for enforcing it. But administrative law is not regarded in these two countries as a separate body of law, altogether distinct from the ordinary law of the land, based upon a different principle and quite differently applied.

The basis of administrative law.

What is administrative law? Before trying to answer this question it may be well to recall the ancient legal maxim that "the king can do no wrong." This principle, or something akin to it, is recognized in all countries. The sovereign cannot wrong his subjects, and hence is not liable to be sued by them. The doctrine was succinctly stated by Chief Justice Roger B. Taney as follows: "It is an established principle of jurisprudence in all civilized nations that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission; but it may, if it thinks proper, waive this privilege and permit itself to be made a defendant in a suit by individuals."[1] This juristic rule rests upon considerations of public policy; it would be inconvenient and dangerous to follow a contrary principle. The public service would be hindered, and the public safety menaced if the supreme authority could be enjoined from action by any citizen at any time. Neither the United States, therefore, nor any state of the Union, can be sued by an individual save with its own consent. But with this consent they may be sued—in accordance with the legal processes laid down in such cases.

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[1] Chief Justice Taney, in Beers *v.* Arkansas, 20 Howard, 527, (1857).

This theory is not rigidly applied.

Now while this is all well enough as a legal theory the fact remains that a nation or a state must necessarily exercise its sovereign powers through human agencies—through public officials who are elected or appointed to do the work of governing. And these officials, being human, will sometimes make mistakes, display negligence, exceed their authority, act arbitrarily, and do injury to citizens or their property. A strict adherence to the legal principle that "the king can do no wrong" would lead to frequent and grave injustices. It would mean that the citizen must suffer wrong without redress. For this reason all sovereign states do, in fact, assume a varying amount of legal liability and permit themselves or their public officials to be sued under certain prescribed conditions.

How can the citizen be best protected against arbitrary acts of government?

The question is: How can this legal liability be best and most safely assumed by the state? Should the citizen be permitted to sue the state (or its officials acting under its authority) in the ordinary courts, or should special courts be provided for this purpose? Should the suit be brought under the general laws of the land, or in accordance with special rules established for controversies of this character? England and America have answered these questions in one way; France, Italy, and other continental countries have answered them differently. Their action, in both cases, goes back to the fundamentals of their respective legal systems. The common law, upon which the jurisprudence of England and America rests, is peculiarly equalitarian in its ideals. It is, and always has been, intolerant of special privilege—especially on the part of those who are the agents of the government. It places upon the public official, be he governor, mayor, policeman, or inspector, the burden of proof that all his actions are fully warranted by law. He has no immunity from the jurisdiction of the courts for the mere reason that he holds an office or wears a uniform. But the Roman law, upon which continental European jurisprudence is largely based, came at the matter from a different angle. It was inclined to regard the state as an end in itself. It was ready to sacrifice the interest of the individual if the well-being of the state was concerned. *Salus populi est suprema lex.* From this it naturally followed that those who served the state in an official capacity were entitled to special consideration in the eyes of the law. At any rate those countries which have based their jurisprudence on the civil law of Rome do not display much patience with the doctrine that any citizen has the privilege of delaying or upsetting the work of public administration in order to get his own grievances redressed.[1]

Official liability in England and in America.

In the common-law countries the citizen has precisely that privilege. In England or in America, if an individual feels aggrieved at the action of a public officer he betakes himself to the ordinary courts for a warrant of arrest, or writ of mandamus, or whatever the appropriate writ may be. He may ask for an injunction to prevent the paving of a street, the awarding of a contract, or the levying of a tax. And he may secure from the courts a decree which ties up some branch of the public business for weeks at a time. It is an Anglo-Saxon axiom that all officials save the very highest (and with certain exceptions which will be presently noted) are subject to the ordinary laws of the land and are amenable to the jurisdiction of the ordinary courts. The highest officials, in turn, are subject to impeachment. If the ordinary officers of government do wrong, whether in their official or unofficial capacities, they may be haled before the regular courts and enjoined or penalized like anybody else. Both in England and in the United States it is true that public officials are permitted to show that the wrong was not wilful, but occurred in the reasonable exercise of discretion given to them by law, in which case they are not held liable. It is also true that there are, in both countries, certain special courts and commissions (like the court of claims at Washington) which exist for the designated purpose of adjudicating claims brought by private individuals against the government. But neither in England nor in the United States do the rules relating to the suability of the state or the public official form a separate branch of jurisprudence; they are part of the ordinary law. Nor do the special courts and commissions make up a regular system of administrative tribunals distinct from the regular judiciary. The court of claims at Washington and the court of customs appeal are integral parts of the American federal judiciary.[1] They have no special status by reason of the fact that virtually all cases coming before them are concerned with some ruling of a public official.

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[1] Joseph Barthélemy, in his *Gouvernement de la France* (Paris, 1919) argues that the system of administrative law was largely a spontaneous result of the French Revolution. The revolutionary authorities, he says, had to make attacks upon property and persons; the judges of the regular courts tried to protect the citizen; whereupon the government fulminated its prohibitions against them. They were forbidden to interfere with administrative acts. "Thus originated," he says, "the unfortunate principle of separating the administrative from the judicial authorities." But the beginnings of the separation far antedate the great upheaval of 1789. As President Lowell showed, many years ago, it was a logical outcome of two features which characterized the old régime in France, namely, the weakness of the courts and the overpowering strength of a centralized administration. If France had possessed a system of common law, as in England, with regular courts strongly entrenched, it is not probable that the present situation would ever have arisen.

The common law attitude toward public officials.

The common law makes no distinction between the acts of an official and those of a private citizen. In either case they must be acts which are legally justifiable or the doer may be prosecuted. Englishmen and Americans make no clear separation between public law and private law,—the one applying to officials and the other to ordinary citizens. On the contrary they set great store on the maxim that all men are equal before the law. This maxim, to be sure, is not rigidly applied in every instance, and it would be erroneous to assert that in America the rights, duties and liabilities of a public officer are determined by exactly the same rules and presumptions of law as are those of an ordinary layman. Nevertheless the principle of equality is fairly well maintained.

The attitude of continental European jurisprudence.

But in France, and in other countries of continental Europe, the public officials are given a special status at law. For acts performed under color of their official duties they are not amenable to the ordinary laws of the land nor may they be brought before the ordinary civil courts. If an individual believes himself to have been wronged by any official's bad judgment or arbitrary action he is entitled to seek redress, but he must seek it from special tribunals which are maintained for this purpose and which apply a special set of administrative rules. It should be made clear, however, that this immunity of public officials from the jurisdiction of the ordinary courts does not extend to anything done by them in a personal or non-official capacity. It does not even extend to acts performed in an official capacity if the injury results from the personal fault or personal negligence of the public officer. If, for example, a policeman makes an arrest in the course of his duty and in accordance with his instructions he cannot be sued in the ordinary courts no matter how wrongful the arrest may be; but if he makes an arrest outside the course of his duty and in disregard of his instructions he may be dealt with like any private individual who lays himself open to a civil suit for assault.

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[1] At the outset the court of claims was not a regular court and its decisions had no mandatory effect. They were embodied in bills which went before Congress for approval. But later it became a regular court, and its decisions are now final unless an appeal is taken to the Supreme Court.

Justification of the continental doctrine.

This division of jurisdiction between the ordinary and the administrative courts in France has existed for more than a century and is regarded as essential to the proper functioning of the government. At first glance the division seems to give the public officials a privileged position, and hence to be undemocratic, for the American conception of democracy is hostile to the idea of giving anybody a judicial status which his fellow citizens do not enjoy. But a moment's reflection will bring to mind the fact that even in democratic America we accord to hundreds of public officials special privileges in the eyes of the law. To take a single illustration: the Constitution of the United States provides that members of Congress shall "in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session . . . and for any speech or debate in either House they shall not be questioned in any other place." The state constitutions give a similar immunity to members of the state legislatures. In other words they create a highly privileged class. If a congressman or a state legislator utters a slander on the floor of his legislative chamber he cannot be brought before the ordinary courts and penalized; he can only be disciplined, if at all, by the House itself. But if you or I, plain citizens, were to utter the selfsame words we should promptly be dealt with as common malefactors.

"Ah, yes!" someone may reply, "these legislators are given a privileged status, to be sure, but it is entirely justified. The work of lawmaking could not be properly carried on if the legislators were subject to arrest on charges trumped up to embarrass them. There would be no freedom of debate if our lawmakers were responsible to any outside authority for the accuracy of their statements on the floor." All of which is quite true. The immunity of legislators is essential to their independence and to the proper functioning of the government. But why should not the administrative officers of the government be given a like privilege? Is not their independence also a desideratum? We speak of legislation and administration as coördinate functions in government; why then should the one be accorded a protection which is not given to the other? The French system of administrative law and administrative tribunals is based upon the principle that all public officials, and not legislators alone, should be assured a reasonable degree of immunity from the control of the ordinary laws.

Administrative law is case-law.

Administrative law in France is not embodied in a code, like the civil law. It is case-law, made up almost entirely of precedents. Some of the rules have been established by the issue of decrees, but in large part they have been accumulated by the decisions of the administrative courts, especially by the decisions of the council of state and the court of conflicts. In this respect it somewhat resembles the common law, as we have it in the United States, for this branch of American jurisprudence has been slowly built up in the regular courts by one decision after another. Foreign jurists have expressed their admiration of French administrative law because it has been so carefully constructed, step by step, in accordance with the needs of the times. A system of law that has grown is usually better than one which is created *de novo* by the action of a parliament or legislature. Administrative law in France is not fixed or steretotyped. It is the one great branch of the law that has not been codified. If you want to know the rules of administrative law on any point you must study the decisions of the administrative courts, just as the American lawyer, when he desires to master the common law in any of its branches, must refer to the judicial decisions.

Its wide range.

The French system of administrative law, built up in this way, covers a surprisingly wide range. It deals not only with the liability of the state and its subordinate divisions for injuries done to private individuals or their property, but with the rules relating to the validity of administrative decrees, the methods of granting redress when public officials exceed their legal authority (*recours pour excès du pouvoir*), the awarding of damages to private individuals for injuries which result from faults of the public service, the distinction between official and personal acts on the part of public officers, and many kindred matters. The whole system is well-knit together and liberal in its attitude toward the individual. Frenchmen do not look upon it as a barrier to the assertion of their personal rights. On the contrary they regard it as a palladium of their liberties, a protection against arbitrary governmental action. They are right in so regarding it, for it gives them a protection which they otherwise would not have. "It can now be said without possibility of contradiction that there is no other country in which the rights of private individuals are so well protected against the arbitrariness, the abuses, and the illegal conduct of the administrative authorities, and where people are so sure of receiving reparation for injuries sustained on account of such conduct."[1]

The administrative courts.

The principal administrative courts in France are the council of the prefecture and the council of state. There is a council of the prefecture in each of the eighty-nine departments. It is made up of three members designated by the national government. The prefect is a member ex-officio and is entitled to preside; but he does not ordinarily attend, for he has too many other duties to perform. His place as presiding officer is taken by one of the members who is designated as vice president. Members of the prefectoral council are usually selected from among persons who are or have been government officials. They are rather poorly paid, and often accept their posts, as one writer says "in order to acquire some social standing." In the old days it was not uncommon for a member of the prefectoral council to be promoted to the office of sub-prefect, but this is no longer the case. The prefectoral councils have become *cul de sacs* for officials whose abilities or ambitions seem unlikely to carry them any farther.

The council of the prefecture:

Its rather unimposing personnel does not greatly matter because the council of the prefecture has a relatively easy task to perform. Its competence is limited for the most part to controversies of a simple sort. In nearly all important cases the council of the state takes original jurisdiction.[2] Complaints

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[1] James W. Garner, "French Administrative Law," in the *Yale Law Journal*, xxxiii, p. 599 (April, 1924).

[2] Sometimes, however, cases involving considerable sums (altogether not involving any difficult legal questions) come before the council of the prefecture.

Its very limited jurisdiction.

made by individuals against the acts of subordinate officials are heard, for example, by the council of the prefecture, but if the validity of a decree or ordinance is attacked, the case goes directly to the council of the state. The eighty-nine prefectoral councils handle more than 300,000 cases a year, but of these nearly ninety per cent are controversies concerning local tax assessments. In other words the council serves primarily as a board of tax revision and abatement. Among the remaining ten per cent of the cases many are concerned with public works (particularly highways), and with the validity of local elections.

Its procedure.

The procedure followed by the prefectoral councils in hearing complaints is very simple and entails no expense to the complainant. The council receives the complaint and refers it to one of its investigators; then, when he has submitted his report, it gives a hearing to all concerned.[1] The charge is sometimes made that the council is entirely under the prefect's influence and usually does as he bids it. Various plans for abolishing the prefectoral councils have been put forward from time to time but no such project has as yet been able to command a majority in parliament.

The council of state.

Appeals may be carried, in virtually all cases, from the council of the prefecture to the council of state, or, more accurately to that branch of the council of state which acts as a superior administrative court. Appeals are frequent, and they often result in a reversal of the decisions made by the lower administrative courts. The council of state is a large body, made up of two elements, political and non-political. Controversies concerning matters of administrative law, however, are heard and determined by a section of the council which consists of thirty-five non-political members, or *conseillers en service ordinaire*, as they are called. These councillors are men of high legal attainment and do their work in masterful fashion. On the roll of *conseillers* one may find the names of many eminent jurists, men worthy to sit on any tribunal however high. The council of state, says a recent writer, "occupies a place in the public esteem and confidence of the French which is even higher than that which the Supreme Court enjoys among the American people."[2]

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[1] The council of the prefecture is not merely an administrative court. It has the function of assisting the prefect. See *below*, p. 554.

[2] James W. Garner, "French Administrative Law" in *Yale Law Journa* xxxiii, p. 599 (April, 1924).

This is because its decisions have consistently shown an aim to guard the rights and interests of the whole citizenship against encroachment by the public authorities. It has deemed no cause too trivial for its attention, when some substantial right of the individual citizen appears to have been infringed.[1]

The value of its work.

The council of state, every week in the year, grants redress to French citizens which no American could obtain from the regular courts of his own country. Time and again it has held that the individual who suffers loss through the negligence of the police is entitled to compensation from the public treasury. It has ruled that persons injured through the collapse of a building owned by the government (and used for purely public purposes) must be compensated. In a word it holds that the state must pay for whatever damage its officers cause, through their official malfeasance or negligence, just as any private employer must make good the torts of his agents. Those who are familiar with the principles of public liability as applied in the regular courts of the United States need not be told that no such generosity of redress exists in this country. An American city assumes no liability for injuries caused to the property of its citizens by the negligence of policemen, firemen, or health officers. You can sue the policeman in the ordinary courts (for all the good that it will usually do you), but the courts will award you no damages against the city which employs him. In the United States we merely take refuge behind the legal sophism that the sovereign state can do no wrong and hence cannot be held liable for the way in which its governmental functions are exercised. The French method of dealing with such matters may offend the equalitarian principle, but it unquestionably renders more justice to the common man. For it is better to sue in a special court, under special rules of law, and get real redress than to have the empty privilege of taking your grievance before the ordinary courts where you may get nothing.

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[1] Barthélemy cites as an illustration the case of a general council (see *below*, p. 559) in one of the departments which offered a small bounty for every poisonous snake killed during the year. It appropriated a sum to pay these bounties, but the resultant snake-killing far exceeded the expectations, and the appropriation proved inadequate. Whereupon the prefect naturally declined to pay any more rewards after the money was exhausted. So the council of state was petitioned for redress and it decreed that the authorities must live up to their original offer, no matter what it might cost them to do so.

Procedure in the council of state.

The council of state deals with several thousand cases every year. They range in importance from controversies over the boundaries of a village cemetery to the annulment of a presidential decree. There is no way in which acts of the public authorities can escape the surveillance of this administrative court if any citizen chooses to call the act in question. He may do this, moreover, with very little trouble and expense to himself. Formalities and fees are at a minimum. All the aggrieved individual need do is to present a petition on a stamped form, the cost of which is small, and even this is reimbursed if he wins his case. So anybody who has a grievance relating to officialdom can have it gone into by one of the investigators whom the council employs for the purpose. A better safety-valve for the malcontents would be hard to devise.

This facility with which individual grievances can be brought before the council of state is not without its disadvantages. It gives the council an enormous number of grievances to investigate, and the complaint is made that the calendar has now become badly congested. A special effort has been made to expedite business, but the cases keep piling up and it seems to be only a matter of time until the accumulation will compel some change in the present arrangements, either by enlarging the council or by placing some limitation upon the ease with which grievances may be laid before it.

The annulment of decrees.

It has been mentioned that no court in France has power to declare unconstitutional a law passed by the two chambers. But this immunity from judicial veto does not apply to ordinances and decrees—not even where they are issued as a means of applying the provisions of a law. Such decrees can be annulled, no matter what their nature, or how lofty the personage issuing them. And it has been pointed out that a large portion of what we call "lawmaking authority" is exercised in France by the issue of these ordinances and administrative decrees. The council of state may also annul the action of any subordinate lawmaking body, such as a general council or a municipal council, if it finds such action to be outside the scope of their authority. National laws are alone exempt.

Local

In addition to this form of annulment the ordinary courts may decline to enforce any ordinance or decree on the ground that it is out of conformity with the general laws, or defective in

Collateral attacks upon administrative decrees.

form, or in violation of the fundamental rights of French citizens. The ordinary courts do not formally declare such decrees to be invalid but merely decline to enforce them. If, for example, an individual is brought before a district court for violating an ordinance, and if he raises an exception to its legality, the judges may, if they see fit, sustain the exception and dismiss the charge. But this is not commonly done. The ordinary courts are in the habit of upholding a decree until the council of state rules adversely upon it.

Effects of an annulment.

When the council of state invalidates a decree or ordinance, it does not ordinarily award damages to anyone who has suffered injury by reason of the attempted *excès du pouvoir,* but its action permits the injured person to bring an action for damages. This he often does and obtains an award. In the United States no redress can be had from the courts in such cases. If an American city council, for example, enacts an ordinance which is beyond the scope of its power, or is otherwise illegal, the courts will quash the ordinance; but they will not usually hold the city liable for any injury that may have resulted in the meantime. So here, again, the French citizen is better off by reason of his system of administrative jurisdiction.

A limitation on the council's power.

It has been said that the council of state can annul any decree by whomsoever issued. But there are certain actions of the President, taken on the advice of his ministers, which are not held to be decrees in this sense—*actes de gouvernement,* they are called, to distinguish them from ordinary presidential decrees or *règlements d'administration.* The former are deemed to be political in character, the latter administrative; but the exact line of demarcation between the two is not altogether clear, even to the experts. A presidential decree setting forth the methods of taking a census would obviously be an administrative act and hence subject to invalidation; but a decree dissolving the Chamber of Deputies would just as clearly be a political act and hence not open to review. The tendency of the council of state has been to broaden the category of administrative decrees until, at present, almost all the actions of the President are held to be performed in his administrative capacity. *Actes de gouvernement* are now uncommon, save during national emergencies.

The administrative courts may invalidate decrees and ordinances on a variety of grounds. The most common among these

The various grounds for annulment.

is the annulment for *excès de pouvoir*, or, as we commonly express it, for being ultra vires (i.e. beyond the legal authority) of the official or council issuing it. Decrees and ordinances may also be voided for what the French administrative courts call a misuse of power (*détournement de pouvoir*). In such cases the authority of the official to issue the decree is not questioned, but the manner of his exercising the authority is attacked.[1] Annulment may also take place for irregularity in the form of the decree and on various other grounds. Any citizen who has an interest in the voiding of an administrative act, even a very remote and general interest, may bring the matter before the council of state. It is not necessary for him to show, as is frequently the case in English and American courts, that he has a direct and substantial interest at stake.

Why France needs her system of administrative law and courts.

France is a republic with a highly centralized administration. Everything, as will be shown in the next chapter, heads up into the form of a pyramid. If her public officials were as free from judicial control as they are in England and America there would undoubtedly be a great deal of arbitrary action. The system of administrative law and administrative courts is a counterpoise to centralization. Something of the sort is bound to develop in any country if the government extends the scope of its functions too widely and accumulates too many responsibilities. Wider functions necessitate the employment of more officials, and where the government is highly centralized the subordinate officials in this vast army of civil functionaries must inevitably keep getting farther and farther away from the ultimate seat of power.

In the United States we have had a striking illustration of this during recent years, since the national government assumed the function of enforcing prohibition. Thousands of agents have been appointed to do this work; they have been given large discretion and authority; many of them function at long distances from the national capital; and in numberless cases they have not scrupled to set at naught the rights of the citizen as guaranteed to him by the constitution. They have often enforced the Eighteenth Amendment by violating the Fifth. The ordinary courts of the United States have endeavored to protect the citizen's constitutional guarantees against unauthorized searches, seizures, arrests, and confiscations; but not always with success. They have afforded no such measure of protection as the council of state provides in France. By their very impotence they have shown, indeed, that if the process of federal centralization continues to make headway in the United States we shall be forced to provide some new agencies of protection against the horde of inspectorial officers who will ultimately roam the land. The best way to forestall the need of something like the French system is to keep administration decentralized.

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[1] For example, where the President of the Republic has dissolved a municipal council, on the advice of the minister of the interior, ostensibly because it was irregularly elected but in reality because it has quarreled with the prefect. The municipal code clearly empowers the president to issue a decree of dissolution, so that there is no *excès du pouvoir;* but there is a misuse of power if the dissolution appears to have been ordered on political or personal grounds.

The *Cour de Conflits.*

With two sets of courts operating in France, there must be at times a conflict of jurisdiction. In America there is one Supreme Court which has the last word in controversies both ordinary and administrative. In France there are two—the court of cassation which is the tribunal of last resort in all ordinary cases (both civil and criminal), and the council of state which is supreme in all administrative controversies.[1] Neither of these two courts is superior to the other; each is supreme within its own sphere. What happens, then, when these two supreme tribunals disagree? To settle such disagreements there is a court of conflicts composed of nine members, namely, the minister of justice ex-officio, three judges delegated by the court of cassation, three by the council of state, and two other persons chosen by the foregoing seven. In addition there are two substitute members elected by the whole court. All, with the exception of the minister of justice, are named for a three-year term, but the membership is very rarely changed.[2] If the ordinary and administrative courts cannot agree as to which shall have jurisdiction in any case the matter goes to this arbitral court for jurisdiction. But they do not disagree very often, as is proved by the fact that the court of conflicts does not have more than a half-dozen cases to handle each year.

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[1] The Senate, as has already been mentioned, is a high court of justice with final jurisdiction in impeachments.

[2] The minister of justice, while entitled to preside, does not usually do so; the remaining eight members choose one of their own number to preside. In the case of a tie-vote, however, the minister of justice is called in to make the decision. This has happened only four times since the establishment of the Third Republic.

The standard works on this subject are Honoré Berthélemy's *Traité élémentaire de droit administratif* (8th edition, Paris, 1920), Maurice Hauriou's *Précis de droit administratif* (10th edition, Paris, 1921) and Henri Chardon's *L'administration de la France* (Paris, 1908). The organization and powers of the council of state are explained in R. Brugère's *Conseil d'État* (Paris, 1910). Mention should be made of the classic chapter on this subject in A. V. Dicey's *Law of the Constitution*, and of Léon Duguit's *Law in the Modern State* (New York, 1919). The latest and best brief survey of the subject is Professor Garner's discussion above cited (p. 541), but attention should also be called to Léon Duguit's article on "The French Administrative Courts" in the *Political Science Quarterly*, xxix, pp. 385-407.

CHAPTER XXIX

LOCAL GOVERNMENT

> Local institutions constitute the strength of free nations. A nation may establish a system of free government, but without municipal institutions it cannot have the spirit of liberty.—*Alexis de Tocqueville.*

The tenacity of local institutions.

It is one of the maxims of political science that governments have a greater degree of stability in their lower than in their upper compartments. Revolutions transform the structure of national government, but usually they leave the local institutions untouched or only slightly modified. Those who go looking for illustrations to support this maxim will find plenty of them in history. The English civil war, for example, although it momentarily changed England from a monarchy to a republic, made no changes in the government of the English boroughs. The American Revolution did not change the government of the New England town or the Virginia county. The collapse of the German empire in 1918 did not bring about a general refashioning of government in the German cities and circles. It takes a tremendous overturn, like the French Revolution of 1789, or the Russian Revolution of 1917, to carry process of reorganization down into the areas of local administration. Local institutions have a superior tenacity because they are usually the product of a long evolution—because they have been moulded to the needs of the people and have become an integral part of the common life.

France as an illustration.

In France the structure of the national government has been changed several times during the past hundred-and-twenty-five years. There have been coup d'états and little revolutions, some of which transformed the spirit as well as the form of government in the nation. But in no case did they greatly alter the system of local government. The latter has managed to weather every storm since Napoleon's time. Today it remains, in most of its essentials, just as the First Emperor left it. To be sure, there have been many alterations in its actual workings, and as a system of local administration it is more democratic today than it was in 1810, or even in 1860. But in its broad and all-pervading characteristics there has been no change at all. Surely a scheme of local government which has withstood so many shocks must have a great deal of intrinsic merit and vitality.

General merits of the French system.

Unquestionably it has both merit and vitality. Among schemes of centralized local government the French have builded the best of all. Their system is peculiarly well suited to the needs of a country in which the national government insists upon retaining control over the local authorities. Centralization is its essence, centralization raised to the n^{th} power. All authority converges inward and upward. It is a system that can be charted in the form of a perfect pyramid.[1] There is in France no recognition of the principle (so freely accepted in England and the United States) that every city and county has a self-evident right to conduct its own affairs in its own way, free from rigid supervision by the central authorities except in so far as such supervision is clearly demanded by the general interest. France is a highly centralized republic as respects all branches of its government. There is no division of powers between the nation and its component parts. There are no independent spheres of governmental authority. The French republic is not a federation of eighty-nine departments; it is a unitary state which has been mapped off into eighty-nine departments for the more convenient per-

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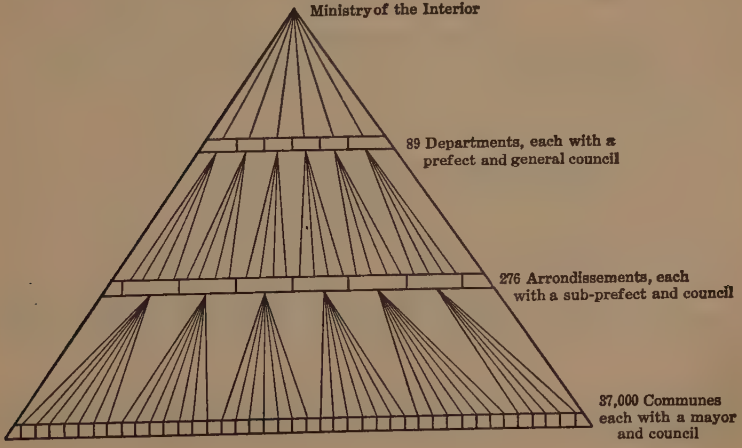
[1] Here is the general scheme of organization and supervision:


Ministry of the Interior
89 Departments, each with a prefect and general council
276 Arrondissements, each with a sub-prefect and council
37,000 Communes each with a mayor and council

formance of governmental functions. The departments, in their turn, have been subdivided into arrondissements, but the divisions and the subdivisions are alike mere creatures of the nation; they have no inherent powers. The minister of the interior at Paris just presses a button and a host of local functionaries—prefects, sub-prefects, and mayors—hasten to do his bidding. All the wires run to Paris.

Its influence in other countries.

England, during the nineteenth century, exercised a great influence upon the development of *national* institutions throughout the world. Every national government from Japan to Belgium has paid homage to the English example. But France, to an almost equal degree, has demonstrated her hegemony as regards the development of *local* government everywhere. Her scheme of prefects and subprefects has spread to the farthest corners of the earth. One finds it, very little changed, in Italy, Spain, Portugal, Belgium, Poland, Holland, Greece, and in the Balkan States. With various adaptations it is functioning in the Far East, in the Near East, and in the countries of Latin America. Outside the English-speaking countries the influence of France upon systems of local administration has been profound.[1] And even in English-speaking countries the drift is steadily towards a greater recognition of those principles on which the French system of local government rests—uniformity, professionalism, paternalism, centralization. Both England and the United States have travelled far in all four directions during the past fifty years, and they are likely to keep on doing so. It is appropriate, therefore, that students of comparative government should be told something about the circumstances under which this scheme of local organization was devised, and should appreciate the qualities which have given it a world-wide vogue.

How the present system of local government originated:

1. The situation before the great Revolution.

Until after the Paris mobs stormed the Bastile on July 14, 1789, there was no system of local government in France, although the country was divided into provinces which had at one time enjoyed a considerable measure of political independence. With the growth of the royal power the political importance of these provinces had dwindled to almost nothing. The chief administrative district in France was the *généralité,* over which ruled an intendant appointed by the king and responsible to him alone.[1] The monarch spoke, and the intendant translated his words into action. Each intendant went about his district ordering, supervising, and controlling all matters of administration, justice, police, and finance. But there was no uniformity in the work of these officials, hence the character of the administration varied from one domain to another. They were all bureaucrats, however, and loyal to the interests of the king.

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[1] The two greatest contributions of France to the science of government are her *Code Civil* and her scheme of centralized local government. Both, it should be noted, were the work of the first Napoleon.

Within the *généralités* there were smaller administrative areas known as communes, more than 40,000 of them, ranging from little hamlets to large cities and towns. During the Middle Ages these communes had secured and maintained their right to self-determination, but during the sixteenth and seventeenth centuries this freedom was gradually curtailed until it vanished altogether. The monarchy, as it gained in strength, deprived the communes of the right to elect their own local offices and installed royal officials in their stead. This was done by different kings, however, and under a variety of circumstances, so that there was the greatest possible diversity in the methods of communal government. No two communes, indeed, were governed exactly alike; in some of them the local offices were sold by the crown to the highest bidder, in some they were made hereditary, in some the king appointed the incumbents for short terms. In only one respect was local government uniform before the Revolution, namely, in the complete absence of popular control over any branch of it.

2. The decree of 1789.

Now the Revolution changed all this in short order. First the revolutionary assembly issued a decree which abolished the *généralités* and divided France into eighty-three departments.[2] It further provided for the division of each department into arrondissements, and for the division of these, again, into cantons. Within each canton the commune was to be the smallest area of local government. Here was a hierarchy of geographical divisions made with a pencil and ruler, just as a real estate promoter would make it, disregarding all considerations of history and sentiment. Save in the case of the communes all the new divisions were arbitrary creations, often without local traditions, and without inherent unity. In all of them, the commune included, the whole government was placed by the decree of 1789 upon an elective basis. Every official—in department, arrondissement, canton and commune alike—was to be chosen by manhood suffrage. And the central authorities were to keep their hands off. The decree made no provision for the exercise of central control from Paris. The revolutionary assembly imagined that local democracy could be inaugurated and made to work by one spontaneous master stroke.

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[1] See the author's article on "The Office of Intendant" in the *American Historical Review*, Vol. xii, pp. 15-38 (October, 1906).

[2] This number was increased to 89 in 1815, then reduced to 86 in 1871, and again increased to 89 in 1918.

Why it failed.

Now history has proved on many occasions that you can no more give self-government to a nation than you can "give" character to an individual. Both have got to be earned, acquired, developed, and guarded with eternal vigilance. The decree of 1789 affords a good illustration of a triumphant demos running amuck. The assembly went too far and too fast. The French people were not prepared for so great and so sudden a change. Hence, as it turned out they were unable to use their new freedom in a sober and judicious way. Abuses developed on every hand; onerous taxes were imposed by the newly-elected governments; the public money was spent wastefully; the communes ran into debt; the local police could not maintain order or enforce the laws, and the guillotines worked overtime. These abuses were so widespread, and so gravely menaced the public security, that the national authorities quickly decided to stiffen their control once more.

3. The reaction of 1795 and the Napoleonic alterations.

This they did in 1795 when the Revolution entered its second and more orderly stage. The principle of popular election was retained, but the local officers were brought under the supervision of a directory at Paris. A few years later, when Napoleon Bonaparte came into power, he carried the process of centralization a step farther by providing that all local officers should be appointed, not elected. Napoleon's action (1800) took out of the system most of the democracy and self-determination that the Revolution had put into it. So long as he remained in power there was no more local home rule in France than there had been under the Bourbons prior to 1789. Thus did revolution produce reaction, as it always does.

4. Since 1800.

From 1800 to the present time the French system of local government has been made somewhat more democratic at one stage and less democratic at another. But the centralization which Napoleon established has never been substantially relaxed—not even after fifty years of republican government. A description of French local government, written in 1875, would pass muster as tolerably accurate today. France has tried no experiments of any consequence in this field during the intervening half century. How different has been the experience of America!

Areas of local government: The departments.

There are eighty-nine departments in France, excluding three additional departments in Algeria. These areas retain the boundaries given to them in 1789, which means that they are irregular in shape, size, and population. A map of the French departments looks like a jig-saw puzzle. Most of them are named after some river, mountain, or other geographical feature—thus the Department of the Seine, of the Rhône, of the Loire, of the Gironde, of the Alpes-Maritimes, and so forth. The Department of the Seine (which includes Paris) is the smallest in area but the largest in population. The French departments bear no resemblance to the states of the American Union. Geographically, and in political status, they more nearly resemble the administrative counties of England. Being arbitrary divisions they had at the outset very little self-consciousness, but during the past hundred and thirty-five years they have managed to develop a considerable amount of it. The department has now become a "historic" unit in France, with some homogeneity of interest. Modern methods of communication have naturally made it, in effect, a much smaller division than it was in Napoleon's time.

The executive head of the department: The prefect.

The executive head of the department is an official known at the prefect.[1] He is appointed by the President of the Republic on the recommendation of the minister of the interior, and may be transferred or removed by these higher authorities at any time. As a rule the post is filled by the promotion of someone from the lower ranks of the administrative service. Prefects are frequently appointed to the less important departments from among the senior sub-prefects of arrondissements; then they are moved by promotion from one department to another. But the minister may make his selections from any quarter that suits him. There are no limits on his range of choice. Technical competence is not the prime quality desired, but obedience, tact, and ability to carry out the policy of the government. A prefect may be removed by the President but absolute dismissals are rare. When the government desires to be rid of an inconvenient prefect it usually transfers him to some other post. Or it puts him on the "unattached" list, where he draws a salary but has no prefectoral duties. The prefect, in short, is the political head of certain technical services and his usefulness is a matter for determination by the ministry which he serves. When a new ministry comes into power there are sometimes a good many transfers.

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[1] This title, like that of consul, was borrowed from ancient Rome, in which there was a *prefectus urbi* who served as the emperor's right-hand man. To increase the prestige of the prefects, Napoleon gave them a semi-military, semi-civil uniform—blue coat, waistcoat, white breeches or pantaloons, collar pockets and reverses of the coat embroidered in silver, a red scarf with silver fringes, a three-cornered hat embroidered in silver, and a sword. This uniform, however, has long since been discarded.

His staff.

Every department has its capital or chief town, with an imposing structure known as the prefecture.[1] Above its main doorway is emblazoned the ubiquitous *Liberté, Egalité, Fraternité;* and from its flagstaff floats the tricolor. In this building the prefect has his residence and his offices. Here, also, are the offices of the prefectoral staff, which consists of the prefect's confidential assistant (*chef du cabinet*), his secretary-general, and the three councillors of the prefecture who constitute the administrative court of the department.[2] All are appointed by the authorities at Paris. In addition there are various directors of divisions and bureaus, together with a host of clerks and other employees. The laws regulate the method by which all these subordinate officials are chosen, and they also prescribe the technical qualifications in each case. There is no spoils system, as we have had it in the United States, for the general qualifications are such that the ordinary political henchman cannot fulfil the legal requirements. As a rule the higher positions are filled by promotion from below, and although political influence counts for a good deal in determining these promotions, it is by no means the chief consideration.

His dual position.

The prefect occupies a dual position. He is primarily the local agent of the central authorities at Paris; he is also the executive head of his department. Powers and duties accrue to him in both capacities. As the agent of the central government he is responsible for the promulgation and enforcement of the national laws within his department. He has charge of the various public services in so far as they operate within his jurisdiction—main highways, bridges, jails, poorhouses, and hospitals, together with certain phases of public health and sanitary work, education, the raising of recruits for the army, the taking of the census, the maintenance of public order, the tobacco monopoly, censorship,—the list, if given in full, would cover a whole page. On behalf of the national government he appoints a large number of officials, including school teachers, postmasters and postmen, collectors of taxes, and sanitary inspectors. In the exercise of this appointing power his discretion is greatly limited by the provisions of laws and decrees which fix the qualifications of the appointees; but he has some discretion, and in the exercise of it is usually influenced by the recommendations of senators and deputies.

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[1] In the Department of the Seine (Paris) it is known as the Hôtel de Ville. This department, as will be explained later, has two prefects.

[2] See *above*, p. 540.

His varied powers.

The prefect is also entrusted with the function of keeping a watchful eye on the government of the communes. The annual budgets of these municipalities must be submitted to him for approval; he appoints some of their officers; he can even suspend a mayor or a municipal council for cause.[1] He may issue orders to the mayor of a commune on any matter connected with municipal police administration. In most of this work the prefect is governed by instructions which come to him from the ministry of the interior, or, in some cases, from one of the other ministries. Usually these instructions are detailed and explicit in character, for in matters of nation-wide concern it is desirable that all the prefects should act alike. But as respects the special problems which arise from time to time in his own department the prefect is generally permitted to use his discretion. The range of this discretion is gradually growing smaller, however, because the prefect can always get into touch with the ministry by long distance telephone, and he is expected to do this whenever he is in doubt. Prefects nowadays do very little on their own responsibility.[2]

Supervisor of municipal administration.

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[1] Subject to a review of his action by the council of state. See *above*, p. 544.

[2] By the criminal code the prefect has ex-officio the powers of a *juge d'instruction* (see *above*, p. 527) but prefects have been forbidden to exercise these powers without express permission from the minister of the interior.

His political activities.

As local agent of the national government *M. le Préfet* is also a politician, and usually a very active one. It is sometimes said that the first qualification of a good prefect is his skill as a vote-getter—not for himself but for the supporters of the ministry in the Chamber. At every election his hand is in evidence. He has no scruples about using the extensive powers of his office, and such patronage as he has, for the benefit of his political friends. When his own side loses the election he expects a demotion (and usually his expectations are fulfilled); when it wins he counts on a move upward—a transfer to a more important department. This active participation in politics has made the prefect's position far more difficult than it would be if he were permitted to maintain a strict neutrality; but prefectoral electioneering has become traditional in France and some writers on French government have expressed the conviction that the only practicable way to make the prefect's office strictly non-political is to abolish it altogether.

The theory and the practice of the prefectoral office.

To understand this curious combination of administration and bossism, it is necessary to bear in mind that Napoleon created the prefect in his own image. He desired to have, in every department, an underling on whom he could rely, who would not stop to ask the reasons for an imperial command. These prefects were to be the doers of his will, not the keepers of his conscience. Naturally, when this system was geared to a republican scheme of government it jolted considerably, and it continues to jolt. For the prefect is no longer the *missus dominicus* of an emperor whose authority passes unquestioned; he is the agent of a minister whose precarious tenure of office depends on the caprice of the deputies. The deputy, therefore, has usurped the post of command. When the minister pulls the throttle or applies the brakes it is because the deputy has nudged his elbow. The ministerial deputies from a department insist on having a prefect who is acceptable to them, and the minister will usually make a transfer when they insist upon it. And having installed the right man in the prefecture these deputies then make him repay his obligation by dispensing favors to them and their friends. So the prefect, as one writer puts it, is continually playing see-saw, not knowing when to stand fast in the line of his official duty and when to give way in the interest of good politics.

As executive head of his department the prefect prepares all

The prefect and the general council.

business for the general council. This body, as will be indicated presently, is the elective legislature of the department, but it is forbidden to deal with any matter which has not been laid before it by the prefect. The latter, in this connection, is more than a prime minister, for he has the sole right of initiative. To the general council he submits each year a budget of proposed local expenditures and this budget is passed with such changes as the council may decide to make. But the appropriations, after they are made, stand wholly within the prefect's control; the council has no share in spending them. On various other matters the general council may pass resolutions and these, if they are within the law, the prefect carries into effect. But the council no more controls the prefect in France than the legislature controls the governor in any of the American states. In both cases it is desirable and indeed essential that the executive shall work in harmony with the legislature, because the latter controls the appropriations; but this does not mean that the executive occupies a dependent position. The general council cannot remove a prefect, or reduce his salary, or curtail his powers. When the two come into conflict, as they sometimes do, the deadlock is solved by an appeal to Paris. The President of the Republic, on the advice of the minister of the interior, has power to dissolve the general council and to order a new election. Or, if the fault seems to lie with the prefect, he can transfer this official to some other department.

Importance of the prefect's office.

The prefecture as an institution is one of great importance in France, because the entire system of local government is clearly pivoted on it. Its technical mechanism runs with marvellous precision and stability. It controls the sub-prefectures of the arrondissements and the mairies of the communes. Cabinets at Paris flit in and out of office; ministers abide their destined hour and go their way; but the prefects and their subordinate officers maintain the whole administration as a going concern. France might change from a republic to an empire with very little effect upon the life of the average citizen; but let the eighty-nine prefectures be abolished and the bottom would drop out of the country. "Just get yourself born in France," the saying is, "and the government will do the rest." The prefect or his subordinates will give you a birth certificate (*acte de naissance*); they will certify you for admission to school, guard you in person, property and health, grant you permission to marry,—they will even perform the civil marriage ceremony! They will tell you when your turn comes to serve in the army, count you in the census, enrol you as a voter, take care of you if you become sick or insane, and issue the burial permit when you die. Even more, they will bury you, for the *pompes funèbres* are conducted by the public authorities. The prefect is the little father of his people, the central figure in this seamless web of administrative paternalism. The billboards everywhere are plastered with his white *affichés*, his decrees which regulate all manner of things both great and small. Nothing seems too inconsequential for a prefect's decree. They fly from his pen like sparks from a blacksmith's anvil. He is as omnipresent as Providence—and his ways are sometimes as inscrutable.

Its worries and difficulties.

From all this one may conclude, and rightly, that although the prefect gets a salary of from twenty thousand to forty thousand francs per year, he earns every sou of it.[1] The office is one of high prestige and social position; deservedly so, for a successful prefect is no ordinary man. It is not merely that his functions are multifarious. Most of the details he can refer to his subordinates. The difficulty lies in the endless variety of the interests with which he has to deal. Ministers, senators, deputies, sub-prefects, mayors, and (not least) the general public all look to him for action which he cannot take and satisfy them all. For fifty years the Third Republic has been trying to harmonize the outward forms of local self-government, as embodied in an elective council, with that spirit of rigorous centralization which is enshrined in the prefect's office. By so doing it has developed a situation in which the prefect must go through gestures of deference to public opinion while actually defying it in accordance with instructions from Paris. It is small wonder that a prefect, though striving hard, often fails to satisfy anybody. He is a buffer between the bureaucracy and the demos; the shocks come to him from both directions. "The agent of the government," says Hanotaux, "and the tool of a party, he is also the representative of an area which he administers. He must remain impartial, foresee difficulties and disputes, remove or mitigate them, conduct affairs easily and quickly, avoid giving offence, show the greatest discretion, prudence and reserve,—and yet always be a cheerful, open, and good fellow; he must be always accessible, speak freely, and be neither affected nor churlish; . . . he must pay attention to and conciliate all the opinions, interests, and jealousies which rage around him."[1] If this be so, prefect's office seems to call for a superman.

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[1] Prefects are also entitled to retire on a pension after reaching the age of sixty provided at least thirty years have been spent in the government service.

The general council of the department.

The general council of the department is made up of members who are elected for a term of six years, one-half of them retiring triennially. The voting qualifications are the same as at national elections. The largest general council (with the exception of that which functions in the Department of the Seine) has sixty-seven members; the smallest has only seventeen.[2] This is because each canton elects one councillor, and the number of cantons is not the same in all the departments. The system of proportional representation, it will be noted, has not been extended to departmental elections. The general council meets regularly twice a year at the chief town of the department, but may be called in special session when necessary. When the council is not in session it leaves an executive committee or departmental commission to exercise routine functions on its behalf. This commission is required to meet at least every month but it sits in almost continuous session.

Its functions.

In a broad way the general council serves as the legislature of the department. It has much to do with the regulations relating to poor relief, public buildings, and, most controversial of all, the traffic rules. But its legislative powers are narrow for three reasons, first, because nearly all important matters are dealt with by national laws or by executive decrees; second, because the general council is forbidden to take up any "political questions" (a term which has been given a very broad interpretation), and third, because its actions may be overruled by the central authorities at Paris. In addition, as has been pointed out, no matter can be taken up by the council except on the prefect's initiative.

So the chief function of the general council is to vote the

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[1] Gabriel Hanotaux, *L'Enérgie française*, pp. 129-131.

[2] In the Department of the Seine the general council is made up of the municipal council of Paris, which has eighty members, together with six members from cantons within the department but outside the city.

The departmental budget.

annual budget of the department.[1] This budget is tentatively prepared in the office of the prefect and submitted to the council at one of its regular sessions. It is then discussed, item by item, and changes may be made in it by majority vote of the council, but such changes are subject to veto by the national government. When the budget has been finally approved, the council figures out the amount of revenue needed. Then it apportions among the various arrondissements the sums of money required to cover the total expenditure. The council is also supposed to examine the accounts of the prefecture but this task it invariably refers to a committee. A few other powers belong to the council, particularly with reference to main highways, bridges, franchises, and public institutions. With actual administration the council has nothing to do, but various questions of administrative policy are submitted to it by the prefect from time to time. Finally, the members of the general council (as elsewhere pointed out) constitute a section of the electoral college which chooses the senators from the department.[2]

Legal status of the department.

French jurists claim that the department is not a mere administrative district but an area with a corporate personality, with the right to sue and be sued, to hold property, and to make contracts. That is all quite true, but on the other hand it has no indigenous autonomy. It has no rights that the national parliament cannot take away at will. Its officers have no final authority. Therein it has even less home-rule than an American county. It has the forms of self-determination, that is all. Its people elect the members of the general council, but this body does not control the executive branch of departmental government. The principle of executive responsibility has not been extended to local government in France as it has been in England.

Proposals for reform.

This system of centralized local government is undoubtedly efficient, but quite naturally it is not popular with some sections of the people. Centralization never commands universal enthusiasm. So the *tutelle administrative* in France is continually under fire. Its critics are fond of quoting the old proverb that "centralization means apoplexy at the center of government and paralysis at the extremities." They complain that it deadens popular interest in local affairs. This, they say, is shown by the scant attention paid to the work of the general councils. As for the prefect his office is the target of a never-ending fusillade from every quarter, and it can hardly be otherwise so long as he is compelled to run with the hares while he hunts with the hounds. It is not improbable, indeed, that the prefect's office would have been abolished long ago if its critics had been able to agree upon something to put in its place. There have been proposals to consolidate the eighty-nine departments into twenty-five "regions," each with a real legislative body and a responsible executive. A few years ago the Chamber of Deputies approved such a plan in principle, but the Senate would not concur and the whole scheme was dropped. Despite this setback it still has many advocates and regionalism may presently become a live issue again.

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[1] The budget provides funds for the maintenance of the prefectures, the court houses, the prisons and other institutions of correction, besides various roads and bridges.

[2] *Above*, p. 436.

The difficulties in the way.

To an outsider it does not seem that a mere geographical rearrangement of this sort would accomplish much. The root of the trouble does not lie in the fact that the departments are too numerous or too small. There are communities in the United States, not half the size of the French departments, which have a very large measure of local home-rule. The tradition, not the map, is at fault in France. The old régime which came to an end in 1789 was paternal and centralized in the extreme. The psychology of the people had become so habituated to paternalism and centralization that it could not be transformed overnight, as the revolutionists imagined. During the past hundred years there has been considerable progress towards decentralization, and it has taken place a little at a time, as is proper. This progress might well be speeded up. Unhappily there are two reasons why it cannot easily be accelerated, and the first is the fact that the masses of the people in the rural districts are making no demand for it. They are not moved by considerations of political theory. Their inclination is to let well enough alone. The second reason arises from the ardent desire of ministers and deputies to keep all the local patronage that they now control. Any reorganization of local government would inevitably take most of this away—and from the politician's point of view any such reform is always an undesirable one.

The departments, as has been said, are divided into arron-

The arrondissement. dissements. These districts are not named but numbered—first, second, third arrondissement. Each is a department in miniature, with an appointive sub-prefect and an elective council made up of one member from each canton within the arrondissement. The sub-prefect, as his title implies, is merely the agent of his chief. Of themselves the sub-prefects have no independent powers, or almost none. They are merely the channels through which the prefect obtains information and transmits his orders—the prefects' "letter boxes" they are sometimes called. The chief reason for their existence may be found in the simple fact that no prefect can attend to all the details of local government. The sub-prefect relieves him of minor functions, both administrative and political. The sub-prefecture, accordingly, is a busy place with a considerable staff and a large amount of clerical work to be done. The sub-prefect is responsible for the efficient performance of all this routine; in addition he spends no small amount of his time on the political warpath. He is the Gallic analogue of the American ward boss, and like the latter is deeply concerned with patronage in all its forms. These sub-prefects are not only the fingers but the eyes and ears of the ministry. They attend all gatherings of a political nature to see what is going on, for it is their duty to keep their superiors well posted. Every sub-prefect hopes for promotion, and the fulfilment of this hope depends upon making friends among the supporters of the ministry in the Chamber of Deputies.

The sub-prefects.

The arrondissement councils. The council of the arrondissement has little more than nominal functions to perform. It makes no laws and votes no money. Until a few years ago it had the duty of allotting the departmental tax quotas among the communes, but even this perfunctory task has now been taken away. The members of the council are ex-officio entitled to sit in the electoral college of the department (which elects the senators) and that is the main reason why the arrondissement councils are continued in existence. Were it not for this electoral function they might readily be abolished. Unlike the department on the one hand and the commune on the other, the French arrondissement is not a corporate entity and owns no property. It is a purely administrative unit.[1]

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[1] Each arrondissement, as has been said, is divided into cantons, but the canton likewise has no corporate organization. It is merely a geographical division, a sort of enlarged ward, which serves for various electoral and judicial purposes.

The communes.

Finally, there is the commune. It is the only area of local government that antedates the Revolution. The American mind, filled as it is with distinctions between townships, villages, towns, boroughs and cities, finds some difficulty in grasping what a French commune really is. The French municipal code defines it as "any tract of territory the precise limits of which were defined by the decree of 1789 or which has been recognized by any subsequent law or decree." As a matter of fact the term includes everything that would be called a municipal corporation in the United States—whether city, town, village, or township. A commune is any community, big or little. Marseilles is a commune; so is Château-Thierry; so is every little hamlet in which American troops were billeted during the days of the great crusade. Some of these little communes have fewer than fifty inhabitants.

All in all there are about 37,000 communes in France. The revolutionary decree of 1789 gave every one of them the same form of local government and this uniformity has continued with only slight variations down to the present time. In France there is no distinction between city government and village government. The one is merely an expanded form of the other. This, in some ways, is a serious defect; for a city is a good deal more than a village writ large. Its problems differ not only in extent but in character. The French government has recognized this to some extent by providing the bigger communes with larger municipal councils and some additional administrative machinery, while holding broadly to the principle of uniformity.[1]

Their frame of government:

1. The council.

The government of the commune is a relatively simple affair, as local governments go. Each commune has a municipal council of from ten to thirty-six members, depending upon its population.[2] The councillors are elected for a four-year term and serve without pay. The qualifications for voting at council elections are the same as in national elections, but proportional representation is not used in the communes. In the small communes the whole council is chosen on a general ticket, but in the larger ones there is a division into wards, each of which elects a portion of the council. This municipal council is the dominating factor in local government, for it not only makes the appropriations but elects the mayor and the other officials who have the spending of the money. Some of its powers, however, are limited by the supervision of the prefect.

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[1] In 1884 the laws relating to the government of the communes were consolidated into a muncipal code. The best commentary on this code, containing all the later amendments, is Léon Morgand's *La loi municipale* (10th edition, 2 vols., Paris, 1923).

[2] This maximum of thirty-six is exceeded in two cases, namely, in Lyons which has 54 councillors and in Paris which has 80.

2. The maire. The first duty of a newly elected municipal council is to choose a mayor. This it must do from within its own membership; it cannot (like the English borough council) make its choice from outside. The mayor is chosen to hold office during the same term as the council (four years); and although serving as chief executive of the commune, he continues to be a member of the council and acts as its presiding officer. There is no separation of executive from legislative functions in the French city. Invariably the mayor is a man who has already served one or more terms in the council and has become a recognized leader in its work. Re-elections are common, and in some of the smaller communes the mayor holds the place as long as he wants it. He is a quaint figure in these little communities—with his tall hat, his tricolor sash, and his air of overpowering importance. In the large communes, or cities, the mayor is usually a prominent politician and not infrequently the recognized local leader of his party. His administrative duties are not onerous, and he is able to devote much of his time to politics.

3. The adjoints. The communal council also selects, from within its own membership, one or more adjoints or assistant mayors, who hold office for four years but continue to be regular members of the council.[1] The mayor, the adjoints, and the councillors all sit together and constitute the government of the commune. The only difference between the smaller and the larger municipalities is that the latter have more adjoints and bigger councils. There is no difference in the powers of the various municipal authorities or in their relations to one another. So, if you describe the government of one French town your description will serve for them all. The American student of municipal institutions need not be reminded that nothing of that sort is true in his own country.

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[1] In the smallest communes there is one adjoint; communes of from 2500 to 10,000 population have two; those of 35,000 have three, and so on. The largest communes have twelve adjoints with the exception of Lyons which has seventeen. Paris, as will be seen presently, has no adjoints; it has two prefects and twenty maires.

Powers of the mayor.

Although the mayor of the French commune is not an independent executive officer like the American mayor, he is by no means a mere figurehead. He has considerably more authority than the mayor of an English borough. Between the American and the English mayor, in other words, he stands midway. The council elects him (as in England), but thereafter it cannot remove him, nor has it any direct control over his actions. Still, this lack of direct control is not a matter of much practical importance for two reasons: first, because the council does not choose a mayor unless it is reasonably certain that he will work in harmony with it, and, second, because the mayor has no way of getting money unless the council gives it to him. Even the money to pay his own official expenses must come in that way.[1] Hence, although he may not be a responsible executive in the ordinary sense, he is under bonds for good behavior.

(a) As the agent of the higher authorities.

The French mayor, like the prefect, occupies a dual position. In some matters (for example, in matters relating to police, public health, finance, the taking of the census, and the application of the laws relating to military service) he is the agent of the higher authorities. Decrees go from Paris to the prefects of departments, from the prefects to the sub-prefects, and from the sub-prefects to the mayors. The mayors then promulgate them to the people. When necessary, the mayor issues his own *arrêtés* or local edicts supplementing these decrees. The higher authorities may suspend or remove a mayor from office if he fails to carry out their instructions.

(b) As the chief executive of the commune.

On the other hand the mayor performs various functions as the chief executive of his commune. In this capacity he carries out the resolutions of the municipal council. He appoints the local administrative officers, prepares the budget for submission to the council, and tries to keep the administration of his commune running smoothly. In the larger municipalities he distributes some of his responsibility among the adjoints or assistant mayors. To one he gives the function of looking after the streets; another takes charge of fire protection, another of sanitation, and so forth. In this way the adjoints serve as titular heads of departments. But the adjoints do very little work in connection with the departments for which they are technically responsible. They leave it to the professional administrators who are paid for doing it. When the mayor is absent, an adjoint serves in his stead. The mayor does not choose his adjoints, and cannot remove them, but if need be he can take an adjoint's duties away and leave him unattached.

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[1] The mayor receives no regular salary but the council is permitted to vote him, each year, an allowance for expenses. This "allowance" in the larger communes is virtually equivalent to a salary.

The permanent staff.

Neither mayors nor adjoints are professional administrators. They are ordinary laymen, elected by the people. They receive no salaries from the municipal treasury and hence can give only a portion of their time to the public service.[1] It is true, of course, that the practice of re-electing mayors and adjoints gives them more familiarity with the affairs of the commune than one customarily finds among the elective officials of American cities, but they do not attempt to manage the business of the municipality upon their own knowledge. The actual work of city administration, in France as in England, is performed by permanent, expert officials who are appointed on the basis of qualifications prescribed by law. This does not mean that local politics play no part in such appointments or in the making of promotions. They do, to a considerable extent. But no amount of political influence will avail to give any man an important post of administrative responsibility in a French city unless he has certain technical qualifications.

Layman and expert.

Ostensibly the French city is governed by laymen; in reality the administration is dominated by experts. Prominent among these is the *sécrétaire de mairie* or city clerk. In the small communes he is usually the local schoolmaster; in the larger ones he is a full-time official who takes a large part of the mayor's responsibilities off his shoulders. Every municipal service in the larger French towns (public works, sanitation, health and so forth) has its full staff of professionals, and together they form a very efficient administrative machine. There are no loose ends in French municipal government.

The work of the council.

The French municipal council, unlike the council of an English or American city, does not meet once a week or once a month. Like a legislature it holds its sessions day after day until the business is finished, and then takes a long recess. As a rule there are four sessions a year, each lasting from two to six weeks. Its powers, according to the municipal code, are of the widest extent. "The council," in the words of this enactment, "regulates by its deliberations the affairs of the commune." Nothing could be much more comprehensive than that! But as a practical matter, the authority of the council is emasculated by the necessity of obtaining the prefect's approval for many of its decisions before they become valid. In the field of municipal finance, particularly, this requirement operates as a great restriction upon its powers. Broadly speaking, however, the council takes the initiative in most matters of municipal government except finance, police, and education. It may adopt resolutions relating to various questions of municipal policy and if these are not annulled by the higher authorities, the mayor and his adjoints see that they are carried into effect. Prefects and sub-prefects everywhere keep a watchful eye on all the municipal authorities. "Act on your own initiative," they say, "but if you try to do anything imprudent we will interfere." This interference, as a matter of fact, comes rather frequently, and results in a good deal of complaint on the part of the mayor and councillors.

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[1] The mayor's post is one of considerable honor. He represents the commune on all occasions of ceremony and these come pretty often in France.

French cities have been well governed.

Whether by reason of this strict supervision, or in spite of it, French cities have been well governed. They have been better governed, on the average, than the cities of the United States. There have been few municipal scandals of any consequence. The city's money has been honestly spent, and good value has been obtained for it. The grosser forms of malfeasance and peculation, which have been so common in the cities of the United States, are virtually unknown in France. Contracts are fairly awarded to the lowest bidder; the spoils system has been kept in control; the officials of the various departments have been given security of tenure; and the police have remained honest. It is sometimes said that French cities are unprogressive, that they let their affairs run in a rut and are slow to adopt new methods. There may be some truth in this; but it is to be remembered that French cities have been growing very slowly and hence have not had need for much replanning or for large reconstructions in their public services. The French temperament, moreover, is not given to exuberance over anything for the mere reason that it is new. Even were central supervision to be relaxed it is not probable that the cities of the Republic would go chasing will-o'-the-wisps at the behest of reformers.

The government of Paris.

A word should be added with reference to the government of Paris. The French capital is under a special dispensation, and there are several reasons for its being so placed. Paris is the largest city in France, five times as large as its nearest rival, Marseilles. It is the seat of the national government with an enormous amount of national property within its bounds, including legislative and executive buildings, museums, libraries, palaces, and public monuments. Paris, moreover, has been a troubler in Israel. It is the point from which all the revolutions and coups d'état have emerged. Although Paris has never contained more than ten per cent of the French population, the city has been responsible for at least ninety per cent of the nation's political vicissitudes. The city on the Seine is both the head and the heart of France. The Third Republic is not going to take any chances on its continued good behavior.

The two prefects and the municipal council.

Paris virtually covers a whole department, the Department of the Seine, and is governed as such by a prefect. Unlike the other eighty-eight departments, however, it has an additional prefect, known as the prefect of police, whose function is the maintenance of law and order. Both prefects are appointed by the President of the Republic, acting upon ministerial advice. There is also a municipal council of eighty members, four from each of the twenty arrondissements into which the city is divided. With the addition of certain members from communes just outside the city (but within the Department of the Seine) this municipal council serves also as the general council of the department.

The Paris wards or arrondissements.

Paris, therefore, has no mayor in the American sense. But the administrative heads of the twenty arrondissements are called mayors, although they are in reality sub-prefects. They are chosen in the same way as sub-prefects and have similar functions. A large portion of the city's routine work is performed at the headquarters or *mairie* of each arrondissement and is not concentrated at the city hall as in American cities. This attempt to combine the government of a city with that of a department has resulted in the creation of a curious hybrid. There is a centralization of power and a decentralization of functions. The prefect of the Seine is the dominating factor in Parisian government. but like all the other prefects he is merely the agent of the ministry. The city council votes the budget, and it has some other important powers; but it does not control the city administration. Many Parisians are dissatisfied with this arrangement and there has been a persistent clamor for a greater degree of metropolitan home rule. Thus far, however, the clamor has availed nothing because the French parliament is made up, for the most part, of senators and deputies from the rural areas and small towns who look upon the capital with suspicion. Their attitude towards the City of Light continues to be a strictly bucolic one. "Paris belongs to France," they say, "and France must control its administration." This might sound strange to American ears were it not for the fact that precisely the same doctrine is applied to Washington. The Department of the Seine is not allowed to manage its own affairs in its own way—but neither is the District of Columbia, the latter with considerably less reason.

The subject of local government in its various phases is fully treated in all the standard works on French administration, notably those of Hauriou, Jéze, Berthélemy, and Chardon. Léon Morgand's *La loi municipale* (10th edition, 2 vols., Paris, 1923) is the most useful book on the government of the commune.

CHAPTER XXX

FRANCE AS A COLONIAL POWER

The physiognomy of a government may be best judged in its colonies, for there its features are magnified and rendered more conspicuous.—*Alexis de Tocqueville.*

Greater France.

France, like Great Britain, is a great colonial power, with possessions scattered all over the globe. She is today more distinctly a world power than she has ever previously been, even under the Bonapartes. The European territory of France covers a little more than 200,000 square miles, which is less than the area of Texas. But the tricolor flies over more than a million square miles outside Europe—in Africa, in Asia, and in America. The population of France itself is only about 39,000,000; but the French colonial empire, including Algeria, the colonies, the protectorates, and the mandated territories, have a combined population of almost 60,000,000. Apart from the commercial possibilities which may be available in these varied possessions this reservoir of man-power is of the utmost importance to France because it serves to counterbalance, in some degree, the numerical weakness of the French in Europe. The failure of her own population to grow at the rate maintained by her neighbors has given France a serious problem, especially in connection with her own military security.

France and England as colonial powers:

The analogies.

France and England, as colonial powers, afford some interesting analogies and some striking contrasts. Both made a belated entry into the field of colonial expansion; they delayed until after Spain and Portugal had captured what then seemed to be the choicest territories in the new world. But although they began late, both France and England were able to make rapid progress. Both obtained a strong foothold in America, and both undertook to get control of India. Both lost their first colonial empires in the latter half of the eighteenth century, the one by conquest, the other by revolution. Both began, in due course, the creation of a second colonial empire, and during the nineteenth century both succeeded in acquiring great tracts of territory in various regions of the globe.

The contrasts.

But the analogies are outweighed by the contrasts. The British empire of today has been built up, for the most part, by private initiative, by the activities of traders and commercial companies. In English colonization the merchant has invariably gone ahead, dragging his government after him. He has been the advance agent of civilization. In French colonization, on the other hand, the government has assumed most of the initiative. The commercial exploiter has usually waited for his government to lead the way, or, at any rate, to encourage him with an assurance of protection. Dr. Johnson, sipping his seventh cup of tea, once expressed amazement that anybody should voluntarily go roaming in far-off lands when it was so much easier to sit comfortably at home. But pioneering has been the sport of the Saxon. There is a roving strain in his blood. His neighbors across the Channel have not been moved by it in the same degree.

There are other differences. England's colonial policy has been unsteady and opportunist, while that of France has been guided by a fixed and consistent purpose. It has sometimes been said, and with some truth, that the British empire was not built up by the government, but in spite of it. In France the government has always aided colonization. England, again, has specialized in the middle latitudes, while France has devoted most of her energies to the tropics. Her principal dependencies —Algeria, Tunis, Madagascar, Indo-China, the French Congo, Somaliland, French Guiana—are all tropical territories. It is for this reason, among others, that the French have not had to wrestle much with difficult problems of colonial self-government and with demands for self-determination. On the other hand, France has given some of her outlying territories the privilege of being represented in the home parliament, which Britain has not yet done. As a final difference, the French are still inclined to look upon their colonies as areas of exploitation which exist primarily for the benefit of the mother country, although this point of view is gradually being changed. England, as regards her great dominions, abandoned it long ago.

"Happy the land whose history is dull!" It was a Frenchman who said it, but there is no tedium in the annals

France as a factor in world politics.

of his own country. No other land has its pages of history so crowded with victory and defeat, success and disaster, glory and humiliation, each following the other in quick alternation. For five centuries no other country has been so consistently mixed up in the turmoils of humankind. Modern history records very few international episodes with France left out. To some extent the explanation of this ceaseless activity may be found in the location of the country, but it is also due in part to racial emotionalism. France sits in the very center of Europe, a quadrilateral with a frontage on two seas. She is neither a North-European nor a South-European country; she is both. Six nations are on her flanks,—England, Germany, Belgium, Spain, Italy, and Switzerland. No other great power has so many immediate neighbors. No other great nation, accordingly, has had so strong an incentive to become involved in the meshes of European diplomacy. Geography has denied France the factor of isolation which has profoundly affected the history of England, and to an even greater extent the history of the United States.

There is no race of men, moreover, exactly like the Gallic race. Frenchmen stand together, a compact and coherent mass, the most homogeneous in Europe. Heirs to the Roman tradition they have always believed themselves to be the salt of the earth. Their manifest destiny they have taken for granted. Hence the policy of the nation has been more often guided by emotion and sentiment than by reason and cool calculation. Frenchmen are willing to be liked or disliked, as the rest of the world may please; but they are not willing to be ignored. A great race, none the less, and one that has contributed its full share to progress in every field. At any rate it is to racial inheritance, as well as to geography, that France owes her strong nationalism, her restless diplomatic activity, her ability to bear overwhelming disasters, and her extraordinary powers of recuperation.

The rise and fall of the first French colonial empire.

During the sixteenth century, when the various countries of Europe engaged in the great race for colonial possessions, France was the premier nation of the continent. Her population was three times that of England. Her wealth was greater, and more widely diffused among the people. Yet the French were the last to enter the field of overseas expansion, and when they got busy all the best territories were gone. Spain and Portugal had acquired Central and South America; England had entrenched herself in India and along the Atlantic seaboard. France had to go farther north to Acadia and the Gulf of St. Lawrence. Yet the French made a brave attempt to establish a Bourbon empire in the new world and by 1750 they were in the way of succeeding. At that date France possessed the whole region north of the St. Lawrence and the Great Lakes, together with what is now the American Middle West and part of the Northwest. The French were also striving to make good their claim to the entire Mississippi Valley; they were moving along the Ohio and had conceived the ambitious plan of hemming the English colonies between the Alleghenies and the sea. By the middle of the eighteenth century they were in control of the great water routes between the Gulf of St. Lawrence and the Gulf of Mexico, with their trading posts stretching all the way from the one to the other. Had France been able to hold this long entrenchment, how different the whole history of the new world would have been!

In India also the French arrived late but made rapid progress when they came. The expansion of their power in the East was so rapid, indeed, that they were nearly on even terms with the English when the long duel between the two nations began. For more than a decade they fought it out on both continents. At the white man's behest, as Macaulay says, brown men knifed one another on the coasts of Coromandel and red men scalped each other on the shores of the St. Lawrence. In the end France was the loser, east and west. By the Treaty of Paris she gave up her dominion over palm and pine. Virtually her whole colonial empire passed into English hands. The date of this treaty, February 10, 1763, was a great day in the chronicles of the sceptered isle. Never did England sign such a peace before.

The old colonial policy.

In the management of her first colonial empire France had not displayed a high degree of imperial statesmanship. Her policy had the vices of Roman expansion without the virtues. Her colonies were regarded as areas of exploitation, nothing more. They were ruled with an iron hand and given no vestige of local self-government. Those who have read Francis Parkman's immortal volumes on the French régime in Canada need not be told that no Roman province was ever more completely delivered into the hands of publicans and sinners. Much has been said and written about England's oppression of her American colonies during the first half of the eighteenth century, and it is beyond question that the colonies along the Atlantic seaboard had some genuine grievances. But let the student of colonization place the institutions of New England and New France side by side during this period. He will find that English colonial policy, with all its shortcomings and mistakes, was by far the more generous and enlightened of the two. All the political iniquities of pre-revolutionary France were transported to her colonies and became more conspicuous there than at home. They were enlarged as through a microscope.

The Napoleonic interlude.

The French took the loss of their first colonial empire philosophically. Their colonial ambitions were not abandoned but deferred—necessarily deferred because France was on the eve of grave troubles at home. The rumblings which preceded the great revolution of 1789 could already be heard. It was not until this era of chaos had been definitely ended by the rise of Napoleon that the French government could once more turn attention to the problem of acquiring colonies. Bonaparte had great plans in this direction. It was his dream to revive the empire of the Cæsars. He hoped to conquer the whole of North Africa and make it tributary to France as it once had been to Rome. This would give him a base from which he could strike at India and eventually wrest it from English control. His eagles would fly over mosque and temple. Herein lay the explanation of his expedition to Egypt and his battle of the Pyramids. But the Napoleonic vision came to naught, as it was bound to do, so long as England held firm control of the seas.

The second French colonial empire:

Algeria.

The Napoleonic era left France exhausted, but still with colonial aspirations. The idea of extending the French sway over northern Africa had captivated the national imagination. And in truth it seemed easier for France to expand in this direction than in any other. Here was good territory, close at hand, and supposedly easy to conquer. The opportunity to make a start was presented in 1827 when the native ruler of Algiers declined to make amends for an insult to the French consul-general. So his city was bombarded, and when this did not bring him to terms an expedition was convoyed across the Mediterranean. In the end the whole of Algeria was subdued, but only after an unexpectedly long and expensive campaign. Then the country was annexed to France.

Its area and population.

This annexation virtually doubled the territories under French control, for Algeria is slightly greater in area than France herself. It contains some highly fertile plains and valleys within easy access of the Mediterranean coast, together with a great hinterland which is mountainous and of limited value for cultivation. This region, however, has considerable mineral wealth, most of which is still undeveloped. The total population of Algeria is about six millions, of whom only ten per cent are Europeans, chiefly French and Spanish. The rest are of hybrid races, for Algeria has been at various times overrun by the Phœnicians, the Romans, the barbarian tribes of Europe, and the Mussulman Arabs, each of whom left their racial imprints. On the whole the natives are much above the general level of African stock, this being due to their long and continuous intercourse with Europe. Agriculture, including the raising of cattle and sheep, is the chief occupation of the people, and Algeria sends large quantities of foodstuffs to France. There is free trade with France both ways, except in the case of a few enumerated commodities, especially sugar and tobacco.

Its government.

The present government of Algeria includes a governor-general, who is appointed by the President of the Republic on the recommendation of the minister of the interior. Under the supervision of this minister the governor-general has charge of the military forces and of police administration. He prepares the annual budget, which is voted by the French parliament but is kept separate from the regular national budget. Before being sent to Paris the Algerian budget is discussed and voted by the financial delegations and by the superior council. The governor-general of Algeria is assisted by two councils, one consultative and the other deliberative. The former is wholly appointive and has advisory functions only; the latter, known as the superior council, is made up in part of high officials and in part of councillors elected by French residents. In addition to voting the budget it has various powers with reference to public works and the supervision of local government. It is sometimes said that there are three financial delegations, elected to represent the French colonists, the taxpayers other than French colonists, and the Mohammedan natives respectively. But it is more accurate to speak of them as three sections of the same body. The financial delegations must have all questions of taxation and expenditure submitted to them. They can cause action to be deferred on any expenditures which are not designated as obligatory.

Local government in Algeria.

Algeria is divided into three departments (Algiers, Oran, and Constantine), each of which is governed by a prefect and a departmental council, much after the fashion of the eighty-nine departments in France.[1] But the members of the departmental councils in Algeria are not chosen by all the people. The suffrage is restricted to French citizens. This does not shut out all but Frenchmen, however, for in 1919 French citizenship was extended by law to natives above the age of twenty-five who served in the world war, or who are owners of land, or who can read and write. In addition to the elective members of the general councils, certain councillors are also nominated by the governor-general to represent the unenfranchised natives. The departments, as in France, are divided into arrondissements and within the latter are numerous communes or municipalities.

The military establishment.

France maintains a considerable military establishment in Algeria including both French and native troops. Algerians are under obligation to serve with the colors under the laws relating to universal military service, and the native divisions form part of the French regular army. The officers and a proportion of the non-commissioned officers are French. The renowned Foreign Legion also has its headquarters in Algiers and is recruited from foreigners of any nationality.

Tunis.

From Algeria the French eventually spread over into the contiguous territory of Tunis, which is of historical interest as the seat of ancient Carthage.[2] The other powers of Europe saw no reason to interfere with this expansion, and indeed the German government, after the war of 1870, encouraged France to subdue Tunis in the hope that the diversion of French energies to Africa would make the country forget Alsace-Lorraine. So Tunis was invaded and became a French protectorate in 1881, which technically it still continues to be, although it has become to all intents a French colony. The Bey of Tunis is still the titular sovereign, but virtually all authority belongs to a French resident-general who is appointed by the President of the Republic on recommendation of the French foreign office. This resident-general serves as minister of foreign affairs in the Tunisian ministry. With him are ten other ministers, chiefly French officials, who serve as the heads of remaining executive departments in the protectorate. They are nominally appointed by the Bey of Tunis but in reality are chosen by the minister-resident in consultation with the French foreign office.

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[1] A portion of the country, known as the Territories of the South, is not included in any of these departments but is under military rule.

[2] Tunis is about the size of Arkansas and has a population of slightly more than two millions, of whom less than ten per cent are Europeans. This European element, moreover, is chiefly Italian, not French. The bulk of the native population is Mohammedan. Part of the country is mountainous with large and fertile valleys; other portions are desert with great oases suitable for date culture. There is also a good deal of mineral wealth in Tunis, including large stores of phosphates. The French maintain an army of occupation in Tunis, including some native regiments.

The Bey and the Resident General.

In 1922 a parliament, known as the grand council, was established in Tunis. It is made up of two sections, one representing the French and the other the natives. The method of choosing the French section is determined by the resident general;[1] the members of the native section are designated in part by the regional councils and in part by organizations representing the agricultural, industrial, and trading interests. This grand council has authority over all items in the Tunisian budget except those designated as mandatory,—for example, interest on the public debt, the salary of the resident general, and so forth. Tunis is not divided into departments but into regions, with a French controller in charge of each. There are regional councils, moreover, made up of members indirectly elected and possessing a certain amount of control over regional expenditures.

The grand council.

On the other side of Algeria is Morocco, a territory which managed to retain its independence until long after all the others had lost it. This was partly because Spain and England, as well as France, were casting covetous eyes upon the Shereffian empire. Each was unwilling that any other country should capture the whole prize. In 1904, however, France and England came to an agreement by which the French were promised liberty of action in Morocco so far as the English government was concerned. Later in the same year a compact was concluded between France and Spain whereby the Spanish government, in return for certain concessions on the Moroccan coast,

Morocco.

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[1] They are, in fact, chosen by the local chambers of agriculture, chambers of commerce, and chamber of mines.

also promised the French a free hand in dealing with the country. Thus the stage was duly set for a further expansion of French imperialism in northern Africa when a new factor was injected into the situation. From Berlin came the announcement that the German government did not recognize these Anglo-Spanish-French agreements and would not be bound by them. This action aroused so acrid a feeling in both France and Germany, that it brought them almost to the verge of war; but in 1906 an international conference at Algeciras (in which the United States was represented) agreed upon a compromise which preserved the independence of the sultan, guaranteed the integrity of his territory, and provided for freedom of trade with equal privileges to all countries.

The German intervention.

Algeciras (1906).

The Agadir incident (1911).

This compromise did not settle the main issue. The Germans had been outvoted at Algeciras and were much chagrined in consequence. They did not abandon their hopes and in 1911 the kaiser gave Europe another war scare by sending a gunboat to Agadir, one of the Moroccan ports, under circumstances which could not be regarded otherwise than as an act of unfriendliness to France. It was not that the Germans particularly wanted Morocco or expected to obtain any part of it. What they desired was the recognition of an interest which could be traded with France for territories elsewhere. Their diplomacy in this respect was for the moment successful inasmuch as the French now agreed to give Germany certain territories in equatorial Africa, in return for which France was allowed to establish a protectorate over a portion of Morocco (1912). In the same year the French and Spanish governments agreed on the limits of their respective zones. Tangier, the capital, had previously been neutralized and put under international control.

The French protectorate (1912).

But in spite of this settlement, Morocco continued to be a rankling factor in European diplomacy until the outbreak of the world war, for both parties to the compact were resentful. The French people believed that they had been blackjacked by a highwayman. The Germans, far from looking upon the arrangement as final, regarded it as a mere day's march on their journey to a larger place in the sun. It was not until the close of the world war that France obtained the opportunity to settle the matter in her own way. The Treaty of Versailles contained a provision requiring Germany to abandon all that she had obtained in privileges and compensations during the years 1906-1911.

Present government of Morocco.

Morocco is now divided into three zones—Tangier (which is administered by an international commission), a Spanish zone along the Mediterranean, and all the rest of the country which is a French protectorate.[1] The French zone is by far the most extensive and embraces an area as large as France herself, with an estimated population of nearly six millions. This territory is still governed in the name of the sultan, who is both the civil and religious ruler of his people. But since 1912 his civil authority has been controlled by a French resident-general who is appointed by the President of the Republic on recommendation of the French foreign office. There is a ministry, as in Tunis, but as yet no representative council. The agricultural and industrial possibilities of Morocco are not yet definitely known, for the interior of the country is still unoccupied by the French.

Other French possessions in Africa.

The African dependencies of France are not confined to the Mediterranean region. Reckoned in square miles, the French have more territory in Africa than the English. But this is because France owns the whole of the great Sahara desert—a tract of imperial vastness but which is practically valueless unless it can be irrigated. Other African territories owned by France are Senegal, Guinea, the Ivory coast, Dahomey, the Niger region, and the Somali coast, the whole with a population of about thirteen millions. The French Congo, in equatorial Africa, is a large and valuable tract bordering the Belgian Congo. By the Treaty of Versailles the French obtained most of two former German colonies, Togoland and the Kamerun, the remainder being placed under British mandate.

Madagascar.

The island of Madagascar, on the east coast, is larger than France, although one may not realize it from a glance at a world map. The French took possession of this island nearly two hundred years ago and then abandoned it. Later they went back and declared it a French protectorate, which it remained until 1896 when it became a colony. Madagascar supports a population of nearly four millions, but the French inhabitants number only about fifteen thousand. It is ruled by a governor-general who receives his instructions from the minister of colonies in Paris. The governor-general is assisted by an advisory council and there are financial delegations as in Tunis. The island is divided into provinces with French commissioners in charge.

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[1] In the endeavor to occupy the whole of their assigned territory the Spaniards met with resistance which they have not been able to overcome.

The French colonial empire in Asia.

In Asia the French have maintained a foothold for nearly three hundred years. By the Treaty of Paris (1763) they surrendered most of their holdings in India but were permitted to keep Pondichéry and a small tract along the Coromandel coast. This territory France still retains but has never been able to expand, for the rest of the Indian peninsula is under British control. Further to the eastward, however, the French have built up a valuable empire in Indo-China.[1] This is made up of five dependencies,—Cochin-China, Cambodia, Annam, Tonkin and Laos—which have China to the north of them and Siam to the west. Together these dependencies have a population of about twenty millions. Cochin China is a colony; the others are still called protectorates. In partial keeping with this status there is a governor-general for the entire territory, a governor in Cochin-China, and a resident-general in each of the other states. The governor-general is assisted by a superior council, the members of which are either ex-officio or appointive. There is a single budget and a uniform tariff for the whole of Indo-China.

Syria.

Among the mandates given to France at the close of the world war, one is of special importance—the mandate for Syria. This territory includes a broad coastal strip of the old Turkish empire, with an area of about sixty thousand square miles and a population of three millions. The population is largely of Arab origin, and Arabic is the language most generally used, but there are large foreign elements in the towns, particularly in Damascus, Aleppo and Beyrut. The land is agricultural with no great mineral resources. France maintains a small army of occupation in the country and carries on the civil administration through officials who are under control of the French foreign office. Reports concerning their work are regularly made to the League of Nations as the covenant requires.

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[1] The island of Réunion, in the Indian ocean, also belongs to France. In the Australian archipelago the island of New Caledonia and some adjacent islands belong to her, and in the Pacific there are various French islands, among which Tahiti is the best known. From the wreck of her first colonial empire France salvaged a few possessions in the new world. She still holds two small islands (St. Pierre and Miquelon) off the coast of Newfoundland which are used as the headquarters of the French fishing fleet. France also retains two islands in the Caribbean (Martinique and Guadaloupe), and holds dominion over French Guiana on the northeast coast of South America.

Representation of the colonies in the French parliament.

Mention has been made of the fact that some of the French colonies (not including the protectorates) have been accorded representation in the home parliament. This is a concession which England has not made to any of her dominions. The United States has given the Philippines and Porto Rico the right to send commissioners to the House of Representatives at Washington; but these insular representatives are not regular members of the House and are not privileged to vote. The senators and deputies from the French colonies have full rights of membership in their respective chambers. In addition to the representation from Algeria there are four senators and ten deputies representing the overseas possessions of France. This representation is allotted arbitrarily, not on a basis of area or population. Réunion, Martinique, and Guadaloupe have each one senator and two deputies; French India has one senator and one deputy; Senegal, Guiana, and Cochin-China have each one deputy but no senators. The other colonies have no representation. Both senators and deputies are chosen by the French citizens, including natives who possess certain nominal qualifications, but most of the natives take no part in the elections.

Inadequacy of the plan.

As a plan of colonial representation, this arrangement is very inadequate. It leaves some of the newer and most important colonies (notably Madagascar) without recognition. As respects the represented colonies it affords a useful channel for the presentation of their grievances and petitions, but beyond this it has little value. In a Senate of over three hundred members, and a Chamber of nearly six hundred, the colonial delegations form an insignificant element. Their support on any measure is hardly worth making a bid for. Moreover, it has been the frequent practice of the colonies to select, as their senators and deputies, Frenchmen who are already active in politics at home and who sometimes have no special knowledge of colonial conditions. There is a common impression that these colonial senators and deputies do not accurately reflect the public opinion of the colonies from which they are accredited, but merely the wishes of the French officials who dominate the colonial elections.

To be logical the French ought to give representation to all their dependencies, or to none at all. But they are not likely to follow the dictates of logic in this matter. The practice of giving representation to the colonies was inaugurated by the First French Republic, revived by the Second, and made a fixture by the Third. But in making it a fixture the Third Republic was not willing to go the whole way. Spain and Portugal have granted representation to all their colonies; Great Britain has given it to none. France accords representation to some colonies and not to others. The United States has pursued a fourth plan, by giving nominal representation to Porto Rico and the Philippines but not permitting the insular representatives to vote in Congress.

The colonial councils.

Prior to 1920 the four senators and ten deputies from the represented colonies, together with delegates from the non-represented ones, made up a colonial superior council which convened in Paris and advised the minister of colonies on matters which he submitted to it. But in the latter year this single body was replaced by three advisory councils which are now respectively known as the high colonial council, the economic council, and the council of colonial legislation. Each has a separate field of advisory jurisdiction.

The ministry of colonies.

The minister of colonies is the chief supervisor of French colonial affairs. He is chosen in the same way as the other French ministers, and like them is responsible to the Chambers. He has general charge of all the territories belonging to France or under French protection outside of Europe, with the single exception of the territories in northern Africa. The French colonial ministry is organized on an elaborate scale, with various services and bureaus. Each bureau is concerned, not with a group of colonies, but with some branch of colonial activity,—for example, colonial finance, colonial trade, or colonial police. A very large amount of routine business is handled by these various bureaus because the French, unlike the English, have not acquired the habit of leaving details to be settled by the colonial authorities. The tendency is to centralize everything in Paris.

There is a formal distinction in status between those French colonies which are organized by law and those which are organized by presidential decree. Only three colonies come in

Colonies governed by law and governed by decree.

the first category,—Martinique, Guadaloupe, and Réunion. Their governments cannot be altered except by action of parliament. But changes in the government of the other colonies can be made at any time by a decree of the President on the advice of the colonial minister. The distinction is not of much practical importance, however, because all the colonies of both categories are governed in much the same way. No French colony has a constitution in the sense that Australia and South Africa have constitutions, that is, organic laws that can be changed by action of the colonial authorities themselves; but several of them have elaborate decrees which virtually serve as constitutions and which are not frequently changed.

How the smaller colonies are governed.

No French colony enjoys self-government, or anything approaching it.[1] In each the executive power is vested in the hands of a governor-general or a governor, appointed from Paris. Like the prefect of a department in France, he has a dual position, for he is at once the agent of the home authorities and the head of the local administration. He is assisted by a secretary-general (who corresponds to the secretary of a prefecture and by various directors or heads of administrative departments, all of whom are appointive officials. In each colony there is also a governor's council with advisory powers. Its composition varies in different dependencies, but it customarily includes some colonial officials together with other persons designated by the governor. The governor must ask its advice on various matters but need not follow it. With the addition of certain magistrates this council also serves as the chief administrative court of the colony.

There is also, in each colony, a deliberative council which is roughly modelled upon the general council of a French department. These deliberative councils are wholly, or almost wholly, made up of elective members. Natives are admitted to the suffrage under certain restrictions, and many of them vote; but the majority do not. In principle the deliberative council of a colony has the same functions as the general council of a department, but they are, in fact, somewhat more extensive. The council votes the budget in each colony but the governor may make provision for necessary expenditures if the council does not do so.

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[1] Attempts have been made, however, to get away from the old policy of complete centralization by means of colonial federations. The first experiment in this direction dates back to 1887, when the five colonies and protectorates in Indo-China were linked together under a governor-general. Eight years later six colonies in western Africa were federated in somewhat the same fashion, and finally, in 1910, a federation was established in French Equatorial Africa. In each of these three federations the governor-general is assisted by an advisory body which contains representatives from the colonies of the federation and is called the "council of government." Local affairs are handled in each colony subject to this federal control. In this way many details which formerly were referred to the French colonial office have now been shifted to the governor-general and his council of government.

The training of colonial officials.

The work of routine administration in the various French colonies, protectorates, and mandated countries, makes necessary the sending-out of a large number of officials. Originally these administrative officials were selected without any test of fitness and owed their appointment to personal or political influence. Then, for a time, the French tried the experiment of recruiting them from the civil service at home; but this also was found unsatisfactory. Finally, it was decided to establish a school or college for the special training of colonial officials, and this was done in 1888. The École Coloniale is located in Paris and is maintained by the government in the same way as a military or naval academy. Admission is by competitive examination and the course extends over two years. All students pursue the same courses during the first year and then specialize in one of the four sections into which the curriculum for the second year is divided. The studies include colonial history, tropical economics, native languages, native law, and colonial administration. The number of graduates is held down by the high standards to a point where it is less than the number of annual vacancies. The best graduates are appointed to minor positions in the colonial ministry or are sent at once to the colonies. This school, however, does not have a complete monopoly, for some positions are still awarded by the minister of colonies at his discretion, and some are filled by competitive examinations open to all French citizens.

France as a colonizer.

For various reasons the French have been less successful than the English in their rôle as colonizers. This is partly due to the combination of good judgment and good fortune which enabled the English, by their control of the seas, to take the best colonies of France away from her. But it is also because the French are not a migratory race. France has had no over-population, no surplus with which to people her dependencies. Even in Algeria the French are outnumbered by people of other

European races. The Frenchman loves his native soil, and well he may, for there is no portion of the earth's surface more blest by nature than the tract that lies between the Rhine and the Pyrenees. Give a young man the assurance of a moderate income and he will rarely leave France for the chance of making a fortune elsewhere. The fairly equal distribution of property among the French people, moreover, has deprived France of that venturesome element, the penniless younger sons, who have played so large a part in the upbuilding of Greater Britain. Finally, something is attributable to the rigid economic policy which France has applied to her dependencies. The doctrine of the open door has produced no rhapsodies in the French colonial office. The colonies have been discouraged from entering into close commercial relations with foreign countries. France has not been able to supply them with sufficient capital or initiative; on the other hand the French government has not been willing that foreign countries should do this.

Unable to populate her colonies with emigrants from home it might be assumed that France would welcome an influx from other countries. But this has not been the government's attitude. All the colonies and protectorates of France are managed as though Frenchmen alone could possibly have any interest in them. The laws, the commercial regulations, the rules relating to the exploitation of mines and forests, all favor the citizen as against the alien. The old mercantilist doctrine that colonies exist for the benefit of the mother country has been hard to submerge; it crops out at every turn.

Nevertheless France has found her colonial empire an expensive luxury. There is not one of her colonies that really pays its own way—when all the debits are reckoned in. This is not to imply, however, that France is making a failure of her imperial enterprises. Quite the contrary. Bearing in mind the difficulties with which she has to contend—the lack of a surplus population, the backward state of civilization in most of her dependencies, and the relative newness of her more important colonies—bearing all these things in mind the marvel is that France has done so well.

The most useful book in this field is A. Megglé, *Le domaine coloniale de la France; ses ressources et ses besoins* (Paris, 1922). The more

important laws and decrees relating to the French colonies are given in A. Mérignhac's *Précis de législation et d'économie coloniale* (Paris, 1924); the later enactments can be found in René Foignet's *Manuel élémentaire de législation coloniale* (Paris, 1924) and in such publications as the *Bulletin mensuel du comité de l'Afrique française* or the *Bulletin mensuel du comité de l'Asie française.* Mention may also be made of V. Picquet's *Colonisation française* (Paris, 1912), A. Sarraut's *Mise en valeur des colonies française* (Paris, 1923) and A. Girault's *Colonial Policy of France* (Oxford, 1917).

CHAPTER XXXI

THE RISE AND FALL OF THE HOHENZOLLERN EMPIRE

> The old political science was mistaken when it regarded the army as nothing but the servant of diplomacy, and gave it only a subordinate place in its political system. . . . If power, within and without, is the very essence of the state, then the organization of the army must be one of the first cares of the constitution. . . . It is the army which supports the state.
> —*Heinrich von Treitschke.*

The Holy Roman Empire.

The great mediæval institution of feudalism developed not only in France but in the regions north of the Rhine. It pulverized these territories into hundreds of small principalities, duchies, margraves, bishoprics, fiefs, and free cities,—all enjoying a large degree of independence although most of them were nominally included within the Holy Roman Empire. This wraith of an empire had an emperor who was chosen by a group of the leading civil and ecclesiastical princes, and the whole territory owed him a shadowy allegiance; but he had no plenary or coercive powers. Everyone has heard, of course, the remark of Voltaire that it was neither holy, nor Roman, nor an empire. It was not holy because its nominal head was a civilian; it was not Roman but largely German; and it was not an empire because it possessed no cohesion or unity. Founded on the accession of Otto the Great in 962 A. D. it continued through all manner of tribulations down to the early days of the nineteenth century, but it never managed to realize its ideal of welding all the states of Central Europe under a unified sway. Its long history is full of interest and brilliancy, of great personages and striking situations, but not of solid achievements.

Brandenburg and Prussia.

Among the various principalities which made up this nebulous confederation was the "mark" or principality of Brandenburg, ruled by the House of Hohenzollern. It was a small tract of territory, without any great advantages in the way of natural resources, and without access to the sea. During the later Middle Ages, however, the principality began to grow both in size and in strength; its name was changed to Prussia, and its rulers began to call themselves electors of Prussia. Then came the Thirty Years' War, in the course of which new territories were acquired, and Prussia became the second largest among the numerous German states. In 1701 its reigning elector took the title of king, and one of his successors, Frederick the Great, made some large additions to the kingdom, notably by seizing the province of Silesia from Austria. During Frederick's reign (1740-1786) the population of Prussia was doubled and the kingdom became one of the great military powers of Europe.

Frederick the Great.

The conquest of Prussia by Napoleon.

After the death of this strong monarch, however, Prussia went stagnant. The army deteriorated and the government became corrupt. Accordingly, when Napoleon undertook to conquer the country in 1806, he found the task a relatively easy one. After his decisive victory at Jena he marched through Berlin to the Russian frontier and in the peace of Tilsit dictated his own terms. Napoleon abolished the Holy Roman Empire—what was left of it. He took away from Prussia nearly half her territory; he also extinguished many of the small German principalities, and combined the rest into a political entity known as the Confederation of the Rhine.

A blessing in disguise.

Although the Napoleonic conquest and the subsequent territorial reorganizations seemed to the Prussians a series of great catastrophes they were in reality the prelude to a new and better era. They roused the country from its doldrums and forced a reconstruction of its government. They impelled Prussia to modernize her economic system and put her army on a new basis. True, the government of Prussia remained an absolutism, without an elective parliament; nevertheless great administrative reforms were accomplished. A large measure of self-government was given to the towns and rural districts. Napoleon insisted that the Prussian army should not exceed a prescribed minimum, whereupon the government set out to circumvent this restriction by a system of universal military training. Here were sown the seeds of that far-reaching militarism which enabled Prussia successively to throw off the Napoleonic yoke, to create a German empire, and ultimately to challenge the world in arms.

The genesis of nationalism.

Most important of all, the iron hand of the Corsican impressed upon all the German states a consciousness of their common interest. The real beginning of the movement for

German unity dates from the humiliations of Jena and Tilsit. By extinguishing a large number of small states Napoleon cleared the ground for a new structure. He showed the people how to organize. For this reason, paradoxical as it may sound, Napoleon Bonaparte was not least among the makers of modern Germany. He forced Prussia to transform herself from a mediæval to a modern state. And Prussia repaid him, when the opportunity arrived, by throwing her new army into the field against him at Leipsic and Waterloo.

Germany after 1815.

Being among the victorious allies, Prussia obtained some important territorial acquisitions at the Congress of Vienna in 1815. This congress also arranged that Austria, Prussia, and thirty-seven smaller states (Bavaria, Baden, Hesse, Saxony, and the rest) should be joined together into a German federation or league of sovereign states. The governing organ of this federation was a Bundestag or Diet, made up of delegates from the various constituent states under the presidency of Austria. It somewhat resembled the Congress of the Confederation which existed in America during the years prior to the framing of the national constitution. Like the latter it was empowered to declare war and make peace, to maintain an army and even to enact laws, but it had no power to tax and no power to borrow. It could exert no authority upon individual citizens, moreover, and had to act through the component kingdoms or principalities. Its procedure was even more complicated than that of the Congress at Philadelphia because the various states of the confederation were unequal in voting power.

The German Confederation 1815-1867.

The German Confederation of 1815 proved a fiasco from the outset. This was largely because the delegates in the Diet ranged themselves into two factions, one led by Austria and the other by Prussia. The two were evenly balanced and proceedings in the Diet were regularly deadlocked by their intense rivalry. Neither was strong enough to act, but each was strong enough to block the other. So the Diet could accomplish almost nothing, and the confederation became the butt of ridicule everywhere. *"O Bund, Du Hund, Du bist nicht gesund!"* was a refrain which indicated the popular attitude toward it. Nevertheless the Diet kept on meeting, wrangling, intriguing, doing very little to justify its existence, but hoping that some exit from its position of impotence might ultimately be found. It

Why it accomplished so little.

could not do otherwise than continue to exist, for there was no one with authority to abolish it.

The Liberal movement.

Meanwhile a movement for changing the government of Prussia from an absolute to a constitutional monarchy was making headway in that kingdom. Prussia had no constitution and no parliament during this period. The king ruled his people with the aid of an appointive council. Several attempts were made to induce a liberalization of the government during the first half of the nineteenth century but nothing materialized until 1848 when the overthrow of the monarchy of France sent its echoes into Germany. Then the German liberals, inspired by the success of the French republicans, managed to procure the calling of a pan-German Congress, with members elected by manhood suffrage from all the states of the confederation.

Its abortive culmination in 1848.

This congress or convention (Vorparlament) of nearly 600 members met at Frankfort-on-the-Main and proceeded to draft a new constitution, democratic in character, which would establish a unified German empire in place of the discredited confederation. The delegates had a great opportunity—as great as that which the fathers of the American republic had fully utilized at Philadelphia sixty-one years before. But they were too numerous, too badly divided in opinion, too visionary, and too uncompromising in their point of view. They wasted several months in debates on the rights of man and the fundamentals of government. Eventually they managed to agree upon a "Constitution of the German Empire" which provided for a strong federation, with an emperor, a cabinet, and a double-chambered parliament, the lower house of which was to be chosen by manhood suffrage. The king of Prussia was to be ex-officio emperor. But the people had become discouraged by the interminable debates. Their enthusiasm had waned and a reaction had set in. Austria, Prussia, and some of the other states refused to ratify the plan; the king of Prussia declined to serve as emperor, and in the end the whole movement came to nothing. The old Diet resumed its sessions and things went on as before.

One of its by-products

The movement of 1848, however, produced one indirect result; it inspired the king of Prussia to grant a constitution to his own people. This Prussian constitution of 1850 was far from being so democratic in its provisions as the liberals desired, nevertheless it did establish a Prussian parliament with the lower chamber on a semi-popular basis. The liberals had hoped for manhood suffrage, but the king would not go so far. The best that he would do was to establish a three-class system of voting which gave the heavier tax payers control of the elections. So Prussia, by the constitution of 1850, established a system of government in which the whole people had a share, but not an equal share. This constitution, despite its illiberal suffrage provisions, remained in operation until the revolution of 1918. Then it was abrogated, and in 1920 a new Prussian constitution was promulgated in its place.

The growth of nationalism.

But if liberalism failed to make much headway in Prussia during the second half of the nineteenth century, nationalism had better fortune. The nationalist aspiration, the desire for a unified Germany under Prussian leadership, had been first aroused during the struggle with Napoleon. It kept growing stronger during the next fifty years; but there was one great obstacle in the way of Prussian hegemony, to wit, the continued participation of Austria in pan-German affairs. Here was a member of the confederation, a powerful member, peopled largely by Germans but not wholly so. For Austria contained non-German elements, Magyars, Czechs, Jugoslavs, and Poles. What the Prussian nationalists desired was a homogeneous empire, peopled by men and women of Teutonic stock, with a common language and common traditions. But in order to establish any such political entity it would first be necessary to thrust Austria out of the German confederation. And Austria, of course, would never consent to this procedure unless compelled by force of arms.

The appearance of Bismarck.

Such was the situation as it shaped itself in the early sixties. Should Prussia undertake to unify the German states at the price of a war with Austria? There was at least one Prussian statesman who harbored no doubts as to the answer. This was Count Bismarck, who became prime minister of Prussia in 1862. He bluntly told his parliament that German unity could never be achieved by speeches and resolutions, but only by "blood and iron." Diplomacy of the *Blut-Eisen* type, however, could not hope to be successful without a large army, and the Prussian parliament would not give Bismarck either the money or the men for an increased military establishment. Thereupon the prime minister induced the king to dissolve parliament and for four years he ruled Prussia without one, levying taxes, borrowing money, and using the proceeds to build up a powerful military machine. Then, when the opportune time arrived, he let the friction between the two countries develop into an open rupture and the Austro-Prussian war began in the summer of 1866.[1]

The war with Austria.

It was a short war. Within six weeks the Prussians overwhelmed the Austrians at Königgrätz (Sadowa) and marched to the gates of Vienna where they dictated their terms of peace. Austria, under the circumstances, was let off rather leniently. No territory was taken from her, but she was compelled to withdraw from German politics and to agree that a new and more closely-knit federation of German states (with herself excluded) should be created to replace the old one. It was German unity, not territorial annexations, that Bismarck was seeking at this stage. When the king of Prussia reasoned with him that Austria had been in the wrong and ought to be punished by a deprivation of some territory, Bismarck replied: "We are not here to punish Austria; we are here to pursue German policy." But some of the smaller German states which had assisted Austria during the war were annexed without any such compunction.

The French intervention.

It was the general expectation that a victorious war with Austria would clear away all the obstacles to a unification of the German states, but this did not turn out to be the case. The War of 1866 aroused France to the danger which was about to be created on her northern border. It impelled Napoleon III to mobilize the French army and to announce that a union of all the German states would not be permitted. The French government, remembering that self-preservation is the first law of nature, took the ground that the establishment of an all-inclusive Teutonic union would upset the balance of power, endanger the peace of Europe, and threaten the security of the

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[1] The story of the quarrel which precipitated this war is somewhat complicated and need not be told in detail here. The essentials are as follows: Prussia suggested to Austria that the two join hands in compelling Denmark to give up the provinces of Schleswig-Holstein which were members of the German confederation and largely peopled by Germans. Austria agreed and the two states jointly made war on Denmark. They were successful in wresting the two provinces from the Danes; but friction then arose between themselves as to the division of the spoils. When the relations between the two countries had become badly strained by this friction Bismarck proposed the exclusion of Austria from the confederation.

French people. Bismarck, of course, did not think it good policy to wage two wars simultaneously, or in such quick succession, so he reluctantly agreed that four South German states (Bavaria, Baden, Hesse-Darmstadt and Württemberg) would be left out of his new federation. It was agreed that these four states might, if they chose, form a separate federation among themselves, and thus provide a counterpoise to Bismarck's aggression; but they took no steps in this direction. On the contrary they soon entered into close military and economic relations with their North German neighbors.

Formation of the North German Confederation.

Instead of a pan-German federation, therefore, Bismarck had to content himself with a confederation of the German states north of the Main. These states numbered twenty-two in all. Prussia now found herself a giant among liliputians, being larger in area and in population than the other twenty-one states put together. A federal constitution was needed, and Bismarck provided it. He did not summon a constitutional convention to draft this document but undertook the work single-handed. It is said that he dictated the whole thing in one afternoon. Then he called a convention of delegates from the various states to discuss his draft. They accepted it, and it was subsequently ratified by the first Reichstag of the new federation which met in 1867.[1] This constitution served the North German federation until 1871, when the four South German states came into the union. Then, with a few alterations, it became the Constitution of the German Empire and so remained until the revolution of 1918.

The Franco-Prussian War.

For the moment France had been able to impose a veto upon the Prussian plans, but it was not to be expected that the nationalist aspirations of the German people could be permanently thwarted in this way. With Bismarck still in power it was inevitable that the French, like the Austrians, would in due course run foul of his indomitable will. And so it came to pass. Four years after he had finished with Austria, he guided the relations between Prussia and France to the breaking point. Bismarck regarded a war with France as essential to the fulfilment of his program. He shared the conviction of the German military authorities that such a war might be embarked upon with every chance of success. Whether he actively tried to promote a clash between the two countries may be a matter of controversy, but he certainly did nothing to avoid it. Perhaps it is not unfair to suggest that France was the original sinner in having attempted to prevent the unification of Germany, thus denying to the German people the right to settle their own affairs, but that Bismarck was the *agent-provocateur* who touched off the powder-magazine when the time came, and thus precipitated "the most imprudent war that ever was." [1]

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[1] The Reichstag made some changes but they were not of much importance. The constitution went into force substantially as Bismarck drafted it.

Its immediate cause.

The immediate question upon which the two countries went to war in 1870 was not of great importance; it would never have led to hostilities if the general relations between France and Prussia had been cordial. It concerned the selection of a Prussian prince for the then-vacant throne of Spain. The French declared that they would not tolerate Prussian monarchs both to the north and to the south of them. Napoleon III and his advisers insisted that the Prussian prince must decline the proffered Spanish kingship—which he did. But this withdrawal did not settle the issue, for the French government thereupon requested from Prussia an assurance that the Spanish candidacy would not be revived at some later time. Such an assurance the Prussian government declared it could not give. Meanwhile both countries worked themselves into a war fervor, and by garbling an official telegram Bismarck added fuel to the flames. On the nineteenth of July, 1870, the French declaration of war was presented at Berlin.

Its outcome.

When the campaign began all the other states of the North German confederation made common cause with Prussia, and so did the four South German states which had been left out of the confederation in 1867. Everything had been thoroughly prepared by Bismarck and Von Moltke, the latter being head of the military organization. The French, as the outcome soon showed, were no match for their opponents in organization, in leadership, or in readiness. The war was short and decisive; within two months France had been overwhelmed, her largest army forced to capitulate, her emperor taken prisoner, and Paris besieged. While the German forces were still beleaguering the French capital Bismarck hastened to finish his program. The North German confederation was enlarged by taking in the four southern states and its name was now changed to the German empire. The proclamation of the new empire was made at Versailles on January 18, 1871.

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[1] Those who are interested in this subject will find a very readable discussion of it, with all the supporting documents, in Professor Robert H. Lord's volume on *The Origins of the War of 1870* (Cambridge, 1924).

The confederation becomes an empire.

This change of name did not require the making of a new constitution. The king of Prussia, who had been president of the confederation, merely assumed the title German Emperor. The parliament of the confederation, with its two chambers (Bundesrat and Reichstag), became the parliament of the empire. The relations between the empire and the states were somewhat clarified by a few verbal changes in the constitution of 1867, and some special concessions were granted to the newly-admitted states, especially to Bavaria. Otherwise the constitution of 1867 was retained intact.

Why the old imperial government should be studied.

Although this imperial constitution went into the discard during the early days of November, 1918, the student of comparative government cannot therefore dismiss it from his mind. For the study of government does not confine itself to successful ventures alone. Great failures in the political field also carry their lessons—or ought to do so—and the German imperial government during the years 1871-1918 represents one of the most gigantic political failures of modern times. The collapse of the Czarist régime in Russia was no surprise to anyone who knew that country. Nor was the break-up of the old government in Austria-Hungary, for it was never regarded, either at home or abroad, as anything more than a clumsy makeshift. But the government of the German empire had come to be looked upon as one of the highly stabilized governments of the world. The majority of the German people were convinced that it had no peer among the governments of other countries. It is true, of course, that considerable elements among the people, the Social Democrats especially, desired to have some of its features liberalized; but only a small group of extremists went so far as to demand the entire abolition of the imperial system. Nor was this admiration confined to Germany. The old German government was highly praised by political scientists in other countries. Judged by its results there seemed to be good reason for its prestige. The German empire, during the forty years following its creation, kept steadily growing in population, wealth, influence, and outward strength.

The revulsion in opinion during the years 1914-1918.

Then, in 1914, came the outbreak of the world war and with it a complete revulsion of attitude in the allied and neutral countries. The whole fabric of German government was denounced as despotic, militaristic, a menace to the cause of democracy and to the well-being of the world. Even among the German people an attitude of hostility began to develop as the war dragged on, and when the hope of victory disappeared they tore their constitution into shreds. Thus the imperial government at length found itself condemned by public opinion in all the allied countries, in most neutral countries, and even in Germany itself. It went to its demise in a cloudburst of vituperation.

Some outstanding features of the imperial constitution.

To the student of political institutions this collapse is more instructive than was the overthrow of the old Bourbon monarchy in France, or the breakdown of the Romanoff empire in Russia. In both these instances the government had existed without the confidence of the people, supporting itself by military force and repression. But the German imperial government, prior to 1914, was not based on coercion. It embodied the forms of popular rule; it accorded manhood suffrage; it accepted the principle that no taxes should be levied without the consent of the people given through their representatives. The imperial constitution, indeed, had some notable merits. It was a concise, clear, and practical document—the work of a man who knew exactly what he wanted and did not mince his words in saying it. It established a strong executive. It centralized the responsibility for administration. It was relatively easy to amend. Bismarck, who framed the document, believed that this facility for amendment would give the imperial constitution the capacity to grow and develop like the constitution of Great Britain. It did grow and develop to some extent—but in the wrong direction. The government which it established became steadily more centralized and less democratic. Its unresponsive character became more and more pronounced. The whole empire became Prussianized.

The German empire which collapsed in 1918 was a federalism made up of twenty-five kingdoms, grand duchies, duchies, prin-

Nature of the old empire.

cipalities and free cities.[1] Of these Prussia was by far the largest both in area and in population, being larger than the other twenty-four states of the empire put together. The German empire was not, therefore, a federation of equals. To use President Lowell's metaphor it was a compact between "a lion, a half-dozen foxes, and a score of mice." In the American union some states are larger in area and more populous than others. Texas has a hundred times the area of Rhode Island; New York has a hundred times the population of Nevada. But no state is so great as to dwarf all the rest. To concentrate half the population of this country it would be necessary to combine eight or ten states. But imagine an American union in which one state extended over the entire country east of the Mississippi and contained nearly sixty per cent of the total population! Obviously it would be impossible to keep this leviathan from electing one president after another, controlling a majority in the House of Representatives, and exercising a dominant influence upon all questions of national policy. Prussia, among the German states, occupied that position. As the lion of the compact she insisted on having the lion's share. Hence the German empire, although federal in form, was not federal in the American sense. Prussia governed the country with a certain amount of reluctant deference to the wishes of the other states. This fact is worth emphasis because it explains a good many things that would otherwise be inexplicable.

One of its peculiarities.

In one sense the empire was actually federal, for the constitution divided the field of governmental powers between the imperial and state authorities. This it could readily afford to do because with Prussia dominating the policy of the empire, it made little difference whether a certain function was lodged in one hand or the other—whether it was made an imperial or a state function. At any rate the constitution was generous in the degree of authority which it left to the various states. The imperial authorities were given authority over such matters as foreign relations, foreign trade, the army and navy, taxation and borrowing, railroads, canals, the postal and telegraph services, currency and banking, patents and copyrights, weights and measures, the regulation of industry, censorship, and so on. In addition the entire field of criminal and civil law-making, and of judicial procedure, was turned over to the imperial parliament. On the other hand the actual administration of these functions was largely (though by no means entirely) devolved upon the twenty-five states.

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[1] There were four kingdoms—Prussia, Bavaria, Saxony and Württemberg; six grand duchies—Baden, Hesse, Mecklenburg-Strelitz, Mecklenburg-Schwerin, Saxe-Weimar, and Oldenburg; five duchies—Brunswick, Saxe-Meiningen, Anhalt, Saxe-Coburg, and Saxe-Altenburg; seven principalities—Waldeck, Lippe, Schwarzburg-Rudolstadt, Schwarzburg-Sondershausen, Reuss (elder line), Reuss (younger line), Schaumburg-Lippe; and three free cities—Hamburg, Lübeck, and Bremen. In addition there was the "imperial territory" of Alsace-Lorraine.

Comparison with the United States.

Here was a conspicuous difference between the German and the American way of apportioning power between the national and state governments. It deserves special mention because the difference still exists under the new republican constitution of Germany. In the United States, when Congress passes a law, the enforcement is undertaken by the federal officers, and the interpretation of the law is entrusted to the federal courts. When, for example, Congress passed the Clayton Act in 1914, it set up a federal trade commission with authority to administer the provisions of the act. This commission has its numerous agents, investigators, and inspectors; and when they discover violations of the law they report the matter for prosecution in the federal courts. But this has never been the German way of doing things. The imperial parliament enacted laws on matters within its jurisdiction, but in almost all cases it devolved the administration of these laws upon the state authorities. For this reason ✓ the central government had an astonishingly small number of officials. Members of the diplomatic and consular services were appointed by the imperial government, as were the chief officials of the postal and telegraphic services, and some other high functionaries; but most of the postmasters and postmen, customs officers, collectors of internal revenue, district attorneys, court officers and others who figure so largely on the federal payroll in America—these were appointed by the governments of the individual German states.

The kaiser.

The chief official of the old empire was the emperor. When the North German confederation was formed in 1867 it was decided to have a presidency (Praesidium) and the king of Prussia was given this position. Then, four years later, amid the patriotic fervor which had been aroused by the victorious war with France, he ceased to be merely president of the federation and somewhat reluctantly accepted the imperial title. By so doing he acquired no additional powers. No imperial throne was set up, no imperial salary provided, no imperial palaces placed at the emperor's disposal. It was assumed that his salary, palaces, and throne as king of Prussia would suffice. As king of Prussia he was already territorial sovereign over about three-fifths of the German territory. Over the remaining two-fifths he merely continued to be the head of a federation, with relatively little authority. This distinction between his powers as king and his powers as emperor was not appreciated by the world at large. Outside Germany everybody assumed that the authority of the German emperor applied uniformly throughout his empire—to Prussia, Bavaria, and Saxony alike. Most of his powers were royal powers; very few of them were imperial. When he conferred on some distinguished visitor, for example, the Order of the Red Eagle, or similar decoration, the newspapers of the world announced it as the action of the German emperor. But it was in fact the action of the Prussian king. As emperor he had no decorations to bestow. The executive authority of the German empire, in fact, was exercised by the rulers of several states and free cities, among whom the king of Prussia was merely *primus inter pares* with the imperial dignity attached to him. It is impossible for anyone to understand the spirit of the old German government unless he gets this point clearly in mind.

His position.

His powers:

1. National defence.

As emperor, the king of Prussia had important executive powers in only two fields of government—national defence and foreign relations. He was commander-in-chief of the armed forces of the empire. As such he supervised the organization of the German army in time of peace and had absolute authority over it in time of war. The emperor was also commander-in-chief of the navy, with similar authority. The constitution gave him power to declare war, but provided that the consent of the Bundesrat or upper chamber of the imperial parliament should also be necessary except in the case of an attack upon the empire. In such cases he could declare war alone.

2. Foreign relations.

The conduct of foreign relations was also in the emperor's hands. He appointed the German ambassadors to other countries, gave them their instructions, received ambassadors from abroad, and exercised a general supervision over all diplomatic negotiations. In this field he possessed the same powers that belong to the President of the United States. But he had a further power which the President does not possess—namely, that of "entering into alliances and treaties with foreign states." This he had the right to do without consulting either branch of the German parliament unless the treaty happened to require parliamentary legislation for carrying its provisions into effect. If, for example, the treaty pledged a reduction of the German tariff, or the payment of a sum of money, or the cession of German territory, the emperor could not carry out these pledges without the coöperation of the German parliament.

It was in these two fields of government, national defence and foreign relations, that the emperor found scope for the exercise of his personal influence. His authority here was direct and decisive. Bismarck, when he wrote those provisions in the constitution, was thinking of his old master, William I. He felt sure that this monarch would move cautiously in all matters pertaining to war and diplomacy. But Bismarck's old master could not live and reign forever. He died in 1888 and the imperial authority soon passed to his grandson, a monarch of an entirely different stripe, wholly devoid of the old emperor's circumspection. And William II undertook to exercise a personal supervision over military and diplomatic matters although he lacked the qualities that were essential to success in either field. The collapse of the imperial power in 1918 was fundamentally due to a long succession of blunders made by William II in military, naval, and diplomatic policy—the domains of government in which the constitution vested him with full power.

3. Other powers.

As respects ordinary executive powers the emperor was not very well endowed by the old constitution. He was authorized to convene both chambers of the imperial parliament and to dissolve the lower house (Reichstag) with the consent of the upper chamber (Bundesrat). He was given the duty of promulgating all laws passed by parliament; but he obtained no veto power, either absolute or qualified. When a bill passed the two chambers it became a law. But as king of Prussia he had what was substantially a legislative veto, for he controlled more than a third of the members in the Bundesrat and could usually secure enough additional votes to defeat any measure which he did not favor. As for amendments to the constitution his control of the large Prussian delegation in the Bundesrat gave him an absolute veto.

The three emperors: William I 1871-1888.

During the years 1871-1918 Germany had three emperors. William I, who had been king of Prussia since 1860, was proclaimed at Versailles on January 18, 1871. Inasmuch as William was born in 1797 he was seventy-four years old when he became emperor; nevertheless he held the throne until 1888.[1] The "old emperor," as Germans of the present generation have called him, was a soldier both by temperament and by training, yet he had the most useful quality that any ruler of men can have—that is, the ability to select advisers more capable than himself. And having chosen his advisers he stood by them through thick and thin. Although not stubborn or headstrong, he was a wary monarch and could not easily be persuaded to do things against his own judgment. William had no desire to be emperor; the title was thrust upon him, and he made no attempt to expand the imperial authority.

Frederick, 1888.

On the death of William I in 1888 the Prussian throne (and with it the imperial title) passed to his eldest son, Frederick. But Frederick was seriously ill at the time of his accession and died within a few months. Thereupon Germany went under the leadership of her third kaiser, who took the title of William II. In addition to being young the new emperor was known to be impulsive, ambitious, and self-confident. For the moment he retained Bismarck as his chancellor but the two soon became estranged and parted company. Thereafter the emperor virtually served as his own chancellor although various statesmen were permitted to bear the title. From 1890 to the outbreak of the world war he made himself a dominating influence in all branches of imperial policy. He took a keen personal interest in the army, in the upbuilding of a navy, and in the conduct of foreign relations. In point of mental capacity he was not inferior to his grandfather, but he lacked the old emperor's shrewdness. His political views were reactionary; he openly avowed himself a monarch by divine right. In the field of diplomacy and international relations his ineptitude was phenomenal, and it appeared to become more so as he grew older. When he came to the throne,

William II, 1888-1918.

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[1] He had the remarkable experience of entering Paris in 1815 after the overthrow of Napoleon I at Waterloo, and again entering the city at the head of his troops in 1871 after the collapse of the second Napoleon.

William II was an enigma, and he remained a good deal of a puzzle, even to his own people, during the thirty years of his reign.

The office of chancellor.

The imperial constitution made no provision for a cabinet. Bismarck argued that the structure of the German imperial government did not lend itself to a ministerial system such as existed in England, but the fact was that he desired to be the emperor's sole adviser. What he wanted was a one-man cabinet. He was ready to have subordinates but not colleagues. So he provided in the constitution that there should be an imperial chancellor, appointed by the emperor to countersign the imperial orders and thereby become responsible for them. But responsible to whom? Not to the imperial parliament, for the chancellor at once disavowed such responsibility. He was responsible to the emperor alone.

Its powers.

This was a curious arrangement, with nothing akin to it in any other country. The explanation is that Bismarck drafted the constitution and created the sort of office that he desired to occupy. Naturally he gave the chancellor as much power and as little responsibility as he dared. He made his own office the pivotal point in imperial administration, for he stipulated that the chancellor should preside in the Bundesrat and should also be entitled to participate in the debates of the Reichstag. He also made it possible, but not essential, to combine the chancellorship with the office of Prussian prime minister, for he intended to be the incumbent of both positions. And so long as he was in power he clung to both of them. For nineteen years, from 1871 to 1890, he was the real ruler of the German empire. He had greater powers than pertained to any appointive officer in any other country. Around him he gathered a corps of subordinates who were called ministers but who had no independent jurisdiction. Their tenure depended on his beck and nod. They were in office to do his bidding. Students of government ought to know something about this remarkable man, commonly acclaimed as the greatest German since the days of Luther, who rose in ten years from relative obscurity to be the idol of forty million people.

Bismarck, the first chancellor.

Otto von Bismarck was born in 1815, the son of a Prussian landowner. He received a good education and entered political life while still a young man. In the Prussian Landtag, or legislature, he attracted attention by his vigorous support of the crown and was presently appointed a member of the old federal Diet which, it will be remembered, was trying to reconcile the common interests of all the German states, Austria included. Growing tired of the wranglings in this body he was appointed to the Prussian diplomatic service and in time became minister to France. He was occupying this post when William I summoned him from Paris, appointed him prime minister in 1862, and entrusted him with the almost hopeless task of making the Prussian system function properly.

Early life.

Becomes prime-minister of Prussia.

His policy.

Bismarck assumed his new post with supreme self-confidence. He had a policy, a definite policy, and clear ideas as to how it could be carried into effect. The gist of this policy has already been stated, but it will bear repetition because its effects were so far-reaching. It made Germany an empire, France a republic, and Italy a kingdom. Briefly, the Bismarck political philosophy may be summed up in this way: "The German states must be welded together into a closer union under Prussia's leadership. To accomplish this, Austria must be ejected from all part in German affairs. This will inevitably mean wars, and to win wars Prussia must have an invincible army. If parliament will not help build up such an army, then parliament must be sacrificed. Nothing must stand in the way of German unity."

This policy he put into operation without a quiver of conscience although it took three wars to do it. Within a period of seven years he dictated his own terms of peace to Denmark, Austria, and France. Meanwhile he drafted a constitution, formed a confederation, and transformed it into an empire. No ordinary man could have done these things, and Bismarck was no ordinary man. He was a tireless worker, clear in his conceptions, and daunted by no obstacle however great. He had no scruples in dealing with his opponents, and his ethical standards as applied to diplomacy left a good deal to be desired. It was a cardinal principle of Bismarckian policy that Germany must never find herself compelled to fight more than one foe at a time. He kept his wars localized. He gave no hostages to chance. He cultivated the friendship of Russia and scrupulously refrained from antagonizing England. It is inconceivable that Bismarck would have let his country get into a war with half the world as it did in 1914-1918.

His fall.

Bismarck ceased to be chancellor of the empire and prime minister of Prussia in 1890. William II virtually dismissed him because he wanted to rule in his own way. A difference of opinion arose and the chancellor submitted his resignation. This procedure had always brought the old emperor to terms, but with the impulsive and self-confident young kaiser it did not avail. Much to Bismarck's surprise and chagrin the resignation was promptly accepted. The ex-chancellor did not take his dismissal in good part but became a severe critic of the imperial government, thus creating a situation that was embarrassing to all concerned. He died in 1898, but before his death a reconciliation had taken place.

Bismarck's successors.

The iron chancellor was succeeded in 1890 by Caprivi, an army officer and personal friend of the emperor, who had no special qualifications for the post. This was not surprising, for William II intended to be emperor, chancellor, and prime minister all in one. As it turned out, Caprivi was not able to placate the Reichstag, so he gave way in 1894 to Hohenlohe, an elderly parliamentarian who was deemed to be a better floor leader. Six years later Hohenlohe was succeeded by Bülow who continued in office until replaced by Bethmann-Hollweg. The latter was chancellor at the outbreak of the war and remained at his post till 1917 when a series of rapid changes followed. Then Germany had four chancellors in about a year—Michaelis, Hertling, Prince Max of Baden, and Ebert. The last-named took over the office during the transition to the republic.

The imperial parliament:

1. The Bundesrat:

Under the constitution of 1871 the German imperial parliament consisted of two chambers—an upper house, or Bundesrat, and a lower house, or Reichstag. The first was assumed to represent the states and the second the people. The Bundesrat had 58 members appointed by the state governments. These members were not distributed among the states equally (as in the Senate of the United States) nor were they allotted in exact ratio to population. The basis of representation was a compromise between the two. Every state had at least one member; several had two, four or six members; Prussia had seventeen. Prussia thus controlled less than a third of the whole membership although her population would have entitled her to more than half. The members of the Bundesrat were not appointed for fixed terms and could be recalled by their respective states at will. They voted in accordance with instructions given them by their own state governments, and for that reason every state-delegation in the Bundesrat always voted as a unit. Any member of the delegation could cast his state's vote; it was not even essential that the other members of the delegation should be present. The Bundesrat, from this point of view, was an assemblage of ambassadors rather than a body of senators.

Its composition.

Writers pointed out, many years ago, that the Bundesrat was unlike any other body in the world. It was not an international conference, being part of a constitutional system, and having power to enact laws. On the other hand, it was not a deliberative assembly, because the delegates voted according to instructions from home. It was also unlike any other legislative chamber inasmuch as the members did not enjoy a fixed tenure of office but might be recalled by their respective governments at any time. It was, in short, an assembly of the sovereigns of the states, sovereigns who were present by proxy.[1]

The Reichstag.

The Reichstag, on the other hand, was a body of nearly four hundred members elected from single-member constituencies on the basis of manhood suffrage. The constitution did not prescribe that a general redistricting must be made at stated intervals, and there was none during the entire history of the empire. As a consequence the districts became very unequal in population. Rural constituencies which had declined at each census still retained their original representation, while the rapidly growing industrial towns got no additional members. There was a great shifting in the German population during the years 1871-1918 but no readjustment of representation in the Reichstag. The situation was something like that which existed in England prior to the reform of 1832 although by no means so bad. And the reason was the same in both cases. Those who had the power wanted to keep it. In Germany the rural districts usually elected Conservatives, Centrists, or Liberals, while the industrial cities chose Social Democrats. A redistricting on a basis of population would merely have increased the Socialist strength in the Reichstag, hence all the other parties joined in opposing it.

In general the two chambers had an equal part in lawmaking, but the Bundesrat became the dominating branch of the imperial

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[1] A. Lawrence Lowell, *Governments and Parties in Continental Europe*, Volume I, pp. 264-265.

Powers of the two chambers.

parliament. Nearly all important bills originated there. The Reichstag, moreover, could be dissolved at any time by the emperor with the Bundesrat's consent, and on several occasions it was dissolved when it refused to concur with the latter on important measures of legislation. But the chief reason for the Reichstag's failure to become a powerful factor in imperial policy was the absence of any means by which it could control the executive. The chancellor was not responsible to it, nor could his subordinates be called to account by its members. The rules of the Reichstag provided for interpellations, as in France, but an adverse vote at the close of a debate was never followed by any ministerial resignations. Hence the interpellation procedure in Germany performed no service except to give members of the Reichstag an opportunity to air their grievances.

Interpellations.

The control of appropriations during the imperial period.

There remained the power of the purse. This, it might be thought, would have enabled the Reichstag to make its authority felt, for the budget had to be voted annually and needed the Reichstag's assent. Why, then, could not the representatives of the people bring the emperor and his advisers to terms by refusing to supply the government with funds? There was a reason why this could not be done, namely, because the executive authorities enunciated and maintained the doctrine that no existing governmental enterprise could be abolished or weakened by the refusal of one chamber to supply the funds necessary for its support. The argument on this point was not wholly without force. Every imperial institution or enterprise (such as the ministry of the interior, the war college, or the system of old age pensions, for example) had been established with the assent of both chambers. Being established in this way it ought not to be abolished or weakened except by action of both the Reichstag and the Bundesrat. So when the Reichstag declined to vote the necessary appropriation for any established branch of the imperial service the executive authorities nevertheless went ahead and maintained it out of whatever public funds were available. It was similarly held that the Reichstag, acting alone, could not take away from the government any existing source of revenue.

A chamber of echoes.

Having no real power to control the policy of the executive, the Reichstag became a chamber of echoes. It received measures from the Bundesrat, went through the process of referring them to committees, debated them, amended and compromised when it could, and in the end gave its assent. When it proved obdurate on any important measure a threat of dissolution could be used to mellow its attitude. No single political party ever managed to obtain a clear majority in the Reichstag, and the executive authorities were skilful in playing one faction against another. They knew the ambitions of each. They could concede a little here and a little there, thus gathering enough votes to get their measures through. The Reichstag had the externals of a democratic chamber. Its members were chosen by manhood suffrage and no law could be enacted without its consent. But its activities were largely negative and it could not be said to control the policy of the empire in any field. It was not a House of Commons or a Chamber of Deputies.

The government of Prussia before the war.

The old German government, in its spirit and faults, cannot be properly understood unless one knows something about the administration of Prussia, for Prussia dominated the empire. Prussia, as has been said, is larger than all the other German states put together. Its government, before the war, rested on a constitution which had been granted by the king in 1850. This constitution provided for a prime minister and a ministry but did not make them responsible to the Prussian parliament. It established two chambers—a House of Lords, as in England, and a House of Representatives chosen by a complicated system of voting in which the voters were ranged into three classes based upon the amount of taxes paid by them. Each class elected one-third of the total membership by indirect election. Thus the heavy taxpayers controlled the house. The wage-earning voters elected only one-third of the whole. Prussia, accordingly, did not have even the externals of democratic government. Its government became and remained a bureaucracy, completely dominated by an executive which neither the people nor their representatives controlled. This Prussian philosophy of government permeated the whole imperial structure.

The military complex.

Germany, Bismarck once said, "owed more to her armies than to her parliaments." The iron chancellor passed off the stage in 1898, but the national psychology of which he was the embodiment kept waxing stronger. The army and navy continued to be the first care of the imperial authorities. The task of bringing the armed forces of the empire to the highest pitch of strength and efficiency seemed to be vastly more important than that of developing a vigorous political life among the people. War was proclaimed by some German philosophers to be a biological necessity, for which a prudent nation should be at all times and in the highest degree prepared. "Ballots are yours," said William II to his people on one occasion, "but bullets are mine." Thus the military complex dominated every phase of German life. They that live by the sword shall perish by the sword. It is an old adage, but a true one as the world discovered anew in 1918.

Three reasons have dictated the inclusion of the outline of imperial government which has been given in the foregoing pages. In the first place, as has been said, the student of government should not be oblivious to the lesson that a government may be outwardly strong while it is inwardly weak, and may look like a success when it is in reality a failure. In the second place no one can understand the government of the German republic, as it is being conducted today, without some knowledge of the old régime, and, what is more, some appreciation of the old political psychology. There is, indeed, a widespread conviction that the national temper has as yet undergone no substantial change. Finally, there is more than a possibility that the imperial government will be restored in Germany—not precisely as it was during the years preceding 1918 but in most of the essentials. The first republic did not endure in France, nor did the second. Even the third attempt seemed for a time doomed to failure. Germany may do better, but it is by no means certain that she will.

The rising tide of discontent in Germany before the war.

The old German government came to an end on November 9, 1918. But before the outbreak of the war it was becoming quite apparent that the imperial government had lost its hold on some elements among the people. The Social Democrats were growing bolder in their demand for various reforms,—for the establishment of outright ministerial responsibility, for the abolition of the three-class system in Prussian elections, and for a redistribution of seats in the Reichstag. In 1908 the emperor promised adherence "to the principle" of constitutional responsibility, but he did not adopt the practice of it. This was shown in 1913 when the Reichstag voted its lack of confidence in the imperial chancellor and demanded his resignation; whereupon the chancellor retorted that he held himself responsible to the emperor alone. Thus the political situation reached a point where ministerial responsibility was bound to be a vital issue in the next Reichstag elections. And it was possible that on such an issue the Social Democrats might win a clear majority of the seats in the lower chamber.

The desire to divert popular attention from internal issues.

There is an ancient rule of European politics that when the people grow restless over some issue of domestic policy it is good tactics to divert their attention to something abroad. This can be done by precipitating a diplomatic crisis, or, in the last resort, by starting a war. Napoleon III was a master of this strategy in his day, but it has been the reliance of autocracy in all ages. In Germany, therefore, when the unrest began to assume serious proportions the imperial authorities grasped at the hope that some notable diplomatic victory, or, if hostilities resulted, a short and decisive war would give the old Bismarckian dogma a renewal of its prestige and would silence the clamor for more democracy. There is no intent to imply that this was the principal cause of the war, or even one of the principal causes; but it at least explains why "the military masters of Germany" (as Woodrow Wilson termed them) displayed so little hesitation in throwing the constitution, the empire, and the dynasty as stakes on the gaming table.

The internal situation during the war.

Inter arma silent leges. Politics also are silenced in war time. For a time the war solidified public opinion in Germany, stilled all criticism of the government, and quieted the clamor for political reform. The Social Democrats joined with the other parties in voting huge war appropriations and in granting the government everything it asked for. The early German victories aroused nationwide enthusiasm and in the ardor of the moment nobody gave thought to questions of suffrage, redistribution, or ministerial responsibility. The military leaders, the German high command, virtually dominated the course of political and diplomatic policy. This is not surprising. In any country there is bound to be a great expansion of executive powers in war time.

The growth of war weariness and unrest.

This domination of political policy by the executive branches of the German government was all very well so long as the ultimate triumph of the German forces seemed to be assured. But the great conflict presently developed into a war of positions which meant that it would be a long war and possibly not a decisive one. The masses of the people were called upon to undergo deprivations and hardships owing to the food shortage. Signs of war weariness began to appear and the spirit of political unrest again showed itself. At first the authorities undertook to silence all such murmurings with a stern hand. Newspapers which indulged in criticism of the government were suppressed; individual agitators were either thrown into jail or drafted into the military service and sent to the front. But in time it became apparent that these tactics would not avail, for in spite of glowing official reports and propaganda the restlessness kept increasing. Thereupon the government decided that it would be wise to quiet the clamor by promising some definite reforms, with the proviso, however, that they should not go into effect until after the war.

The great events of 1917:

At this stage there intervened two events of far-reaching importance, both of them tending (although in different ways) to spread internal unrest beyond the German government's control.

1. The Russian revolution.

The first was the Russian revolution of March, 1917, which roused new hopes among the German Social Democrats. What the Russian people had done to czarism, they believed, the German people could do to kaiserism. The war weariness of the German people had now become much more pronounced and gave the agitators a fertile soil in which to work. One Socialist member of the Reichstag grew bold enough to mount the tribune and declare that the coming of a German republic was inevitable. The debates in the House grew stormier and the government sought shelter by proroguing it. This was a risky stroke, a return to the Bismarckian policy of the early sixties, and one that nothing but military success could justify.

2. America's entry into the war.

The second event of great importance, even in its relation to German internal affairs as the result proved, was America's entry into the war. The German military leaders hastened to announce that America would count for little on the battlefield, that American troops could not be raised, trained, and transported to Europe in large numbers before the war had been won. But the real significance of America's action could not be concealed from the German people by these assurances. It meant that the imperial authorities, by a series of diplomatic blunders, had brought a new and powerful antagonist into the field, thus making sure that the war would be either lost or prolonged. It also meant that American propaganda, in the interest of democratic government, would be used on an unprecedented scale to break down the confidence of the German people in their own rulers.

The eve of the revolution.

Still the German government could not bring itself to meet this situation with an immediate and thorough-going scheme of political reform. It evaded and postponed, although an overwhelming majority in the re-summoned Reichstag was insistent in demanding action. The high command still clung to the hope that the war could be won by a supreme effort before American intervention became effective. But this hope soon vanished. Repeated "drives" in the spring of 1918 failed to crush either the British or the French armies. Thereafter events moved rapidly, and for the Germans disastrously. During the early autumn the war developed into a rout. From Switzerland to the sea the German line gave way at all points, slowly at first, then in headlong withdrawal. Whereupon the high command lost its nerve. In haste the military leaders called upon the government to make peace, immediate peace, peace at any cost, and the Berlin authorities hurried a message to President Wilson asking for an armistice. Meanwhile their submission to the demands of the Social Democrats became complete. One political reform after another was hurried through. A new chancellor was chosen, electoral reform was granted, also ministerial responsibility, and a redistribution of seats in the Reichstag.

The Ides of November.

But the hour of repentance had been too long delayed. The Social Democrats and the Independent Socialists would not now be satisfied with anything short of a full-blown republic and their demands found support among the wage-earners everywhere. One of President Wilson's notes, in answer to the request for an armistice, seemed to imply that Germany could expect no leniency unless the old scheme of government was abandoned. This was a powerful influence in breaking down what was left of the old autocratic spirit. On November 4 the German fleet mutinied at Kiel. Three days later Bavaria rose in revolt. Great crowds of people assembled everywhere demanding that the kaiser abdicate and that a republic be proclaimed. Presently the disorder reached Berlin and the government did not dare attempt its suppression. Meanwhile, the emperor had taken refuge at army headquarters, leaving the chancellor in control of affairs at the capital. The latter, on November 9, announced the emperor's abdication and turned his own office over to Friedrich Ebert, the leader of the Social Democrats. The kaiser thereupon fled to Holland; the crown prince did likewise, while the leaders of the military party scurried for safety into Switzerland or Sweden. During these feverish days, moreover, the various state governments were everywhere overturned. Kings, grand dukes, dukes, and princes gave up their authority, without resistance, to provisional councils. Thus Germany changed from a military empire to a socialist republic. The change was accomplished within a week and virtually without bloodshed.

Of the many books which deal with German constitutional history the most useful for general reference are Heinrich von Treitschke's *Deutsche Geschichte im Neunzehnten Jahrhundert* (translated into English by E. and C. Paul under the title *History of Germany in the Nineteenth Century*, 7 vols., London, 1916-1920) and H von Sybel's *Begründung des deutschen Reiches* (also translated as *The Founding of the German Empire*) (7 vols., New York, 1898) A less detailed account, covering a longer period, is given in Ernest Henderson's *Short History of Germany* (New York, 1916), and in J. Holland Rose's *Political History of Germany in the Nineteenth Century* (Manchester, 1912). Mention should also be made of W. H. Dawson's *Evolution of Modern Germany* (London, 1909) and of R. H. Fife's *German Empire between Two Wars* (London, 1916).

Good surveys of the events which preceded and accompanied the collapse of the empire are given in R. H. Lutz, *The German Revolution (1918-1919)* (Stanford University, Calif., 1922) which contains a full bibliography; E. Bevan, *German Social Democracy during the War* (New York, 1919); Miles Bouton, *And the Kaiser Abdicates* (New Haven 1921); and Hans Delbrück, *Government and the Will of the People* (New York, 1923).

The most useful short biography of Bismarck is by J. W. Headlam (New York, 1899), but the iron chancellor also published two volumes of *Reflections and Reminiscences* prior to his death. The third volume was withheld from publication until after the close of the world war.

On the structure and workings of the imperial government the best detailed account is that in Paul Laband's *Das Staatsrecht des deutschen Reiches* (4 vols., Tübingen, 1901) of which there is a translation into French but not into English. A good survey may be found in President Lowell's *Governments and Parties in Continental Europe* (2 vols., Boston, 1897), vol. i, chap. v., and a briefer outline in the first chapter of Malbone W. Graham's *New Governments of Central Europe* (New York, 1924). Mention should also be made of B. E. Howard's, *German Empire* (New York, 1906) and F. Krüger's *Government and Politics of the German Empire* (New York, 1915). This last-named book is strongly pro-German. It contains a very useful bibliography. A copy of the imperial constitution may be found in the appendix to Vol II of Lowell's *Governments and Parties in Continental Europe*, and an English translation is given in W. F. Dodd's *Modern Constitutions* (2 vols., Chicago, 1908). A volume by Otis H. Fisk entitled *Germany's Constitutions of 1871 and 1919* (Cincinnati, 1924) gives the texts of the two documents with some useful notes.

CHAPTER XXXII

THE NEW GERMAN CONSTITUTION

> But, oppression by your mock-superiors shaken off, the grand problem yet remains to solve: that of finding government by your real-superiors. Alas! how shall we ever learn the solution of that?—*Thomas Carlyle.*

The new provisional government.

The old government having collapsed, it became necessary to create a provisional administration. Ebert, on assuming direction of affairs, hastily formed a council of six members, three of them Social Democrats and three of them Independent Socialists. A proclamation announced that the German people would later be called upon to elect a constitutional convention which, in turn, would settle the future government of the country. Meanwhile the council of six, under Ebert's leadership, was to manage affairs without a constitution. It was this provisional government that authorized the signing of the armistice.

A schism in the council.

But when hostilities had been ended the council of six found itself badly divided. The three Social Democrats were content with the political revolution as an accomplished fact; the three Independent Socialists regarded the work as only half completed; they wanted an economic revolution. Meanwhile, as in Russia, the organization of workers' and soldiers' councils went on throughout Germany, and each faction in the council of six tried to get the support of these bodies. In the end the Social Democrats succeeded, and the Independents thereupon withdrew from the government. Their withdrawal was the signal for Spartacist (or communist) uprisings, but Ebert filled the vacancies in his council from the ranks of the Social Democrats and by aggressive measures soon managed to quell this second revolution, as it was called.

The Weimar assembly.

In January, 1919, the promise to call a constituent assembly was fulfilled. Elections took place throughout Germany and 423 delegates (including thirty-nine women) were chosen by universal suffrage in accordance with the principles of proportional representation. In the following month they assembled at Weimar to frame a constitution for the new German republic.[1]

Its composition.

The Weimar assembly contained representatives of all the old political parties, but the Conservatives (Nationalists) formed a very small group. The Social Democrats had the largest delegation, one hundred and sixty-five, or more than one-third of the entire membership.[2] Next in point of strength came the Center, or Catholic party, and then the Democrats or Progressives. The Independent Socialists, or extreme Left, made an even poorer showing than the Conservatives. Thus the assembly was so constituted that no one party could dominate its work. It was bound to adopt a constitution full of compromises if it adopted a new constitution at all. To this end a coalition was formed, including the Social Democrats, the Center, and the former Progressives, now known as Democrats. This bloc controlled more than seventy-five per cent of the membership.

Its methods of work.

The delegates got to work quickly, and in four days had adopted a provisional scheme of government. This had been prepared for it in advance. Ebert became provisional president, with Philip Scheidemann as his chancellor, and a ministry was formed representing the various parties in the majority bloc. Then the assembly enacted some provisional laws and appointed various committees to compile data and to study the various possibilities. These committees were so constituted as to give representation to the various political elements in the assembly and to the various geographical divisions of the country. Obviously there were great differences of political opinion among the members of these committees, and many compromises were found necessary. In the end, however, the assembly was able to frame a document that satisfied the middle parties, that is, all parties except the Nationalists at the one extreme and the Independent Socialists at the other. After much trimming and touching-up, this constitution was adopted by the convention on July 31, 1919, and went into force eleven days later. It was not submitted to the German people for ratification.

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[1] The assembly met at Weimar for the sentimental reason that this city was associated with the real cultural glories of the German people, and for the practical reason that in Berlin the assembly might be subjected to communist interference.

[2] The Social Democrats had only 53 seats in the old Reichstag, while the Conservatives had 83. The Conservative representation in the constitutional assembly was reduced to 42. The Center dropped from 103 to 90.

General significance of the new constitution.

The Weimar constitution is a document of more than ordinary interest and significance. It provides an organic law for sixty million people. That, of itself, entitles the document to some attention from students of comparative government. It was framed, moreover, with great care and after prolonged deliberation by a body of men and women most of whom were sincerely anxious to give their country a fresh start on a genuinely democratic basis.[1] Thus it embodies the German conception of political and industrial democracy. Finally, the Weimar constitution borrows a good deal from other countries—notably from France and Great Britain, but to a slight extent from the United States as well. The leaders of the assembly familiarized themselves with the workings of popular government in all these countries. They retained from the old imperial constitution whatever they thought worth saving, but they did not hesitate to borrow from outside. It is interesting to see, therefore, not only what they took but what they declined to take.

Its size and scope.

The constitution of the German Reich is one of the longest documents of its sort, containing more than ten times as many words as the constitution of the United States. It consists of a preamble and two comprehensive chapters, which are divided into sections, and these again into clauses, the latter numbered serially throughout the document. The prolixity of the constitution is due to the large mass of detail which the Weimar assembly thought desirable to incorporate in it,—detailed provisions relating to economic and social matters and to the rights of the citizen. The convention's method of making compromises was to concede on the non-essential clauses whenever any of the middle parties insisted. Many concessions on minor points were made in order to secure a fairly general agreement on the constitution as a whole, and every such concession meant a new clause.

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[1] A high degree of public interest was taken in the assembly's proceedings. The newspapers were filled with the discussions, while a flood of pamphlets and books proposing all sorts of constitutional schemes was let loose upon the land. The convention which framed the constitution of the United States in 1787 began its work in May and finished in September; the Weimar convention began on February 6, 1919, and ended its work of constitution-making on July 31. The one occupied four months, the other nearly six. But the Weimar assembly took a recess of about two months while the peace negotiations were going on, during which time the committees did some work although the assembly was not sitting. When the Weimar assembly finished its constitution it did not, like its Philadelphia prototype, hold a farewell dinner and dissolve. It remained in existence until a newly-elected Reichstag could be installed.

The proposed dismemberment of Prussia.

Does the new German constitution provide for a federal government like that of the United States, or for a unitary government like that of France, or for something between the two? Germany before 1918 was called a federal empire, yet it lacked the first essential of a true federalism, namely, the legal equality of the states comprising it. One state, being larger than all the others, had various special privileges. The framers of the new constitution were desirous of creating a true federalism; but how could this be done without tearing massive Prussia into pieces? At the outset the convention seriously considered a proposal to divide Prussia into seven or eight states. But the idea of partitioning the old Königreich was quickly submerged by the tide of opposition which surged into Weimar from all quarters. So Prussia was left untouched, a giantess who must inevitably dominate the new German Reich as she did the old, although hardly to the same degree inasmuch as her special privileges have been abolished and her representation in the new Reichsrat will not be solid, as it was in the old Bundesrat.

Relation of the states to the Reich.

Although the new government is federal in form it is rather dubiously so in fact. Under the old constitution the center of political gravity rested with the states.[1] If the central authorities seemed to be very powerful, this was only because people did not make much distinction between the imperial government headed by a kaiser and the Prussian government headed by a king,—for kaiser and king were the same individual. Or, as the irreverent were in the habit of saying, "The kaiser must be careful how he meddles with the king of Prussia or he will find himself boxing his own ears." The old German government, as such, was not inherently strong; it did not have the strength of the federal government in America. But in the new government the balance of power has been avowedly shifted to the nation. Most of the powers which the individual states were free to exercise before 1918 have been taken away or greatly curtailed. The German state governments, under the new constitution, are made absolutely subordinate to the will of the nation as a whole. They have been so completely subordinated, indeed, that some question has been raised as to whether the new Germany can rightly be called a federal republic at all.[1] Certain it is that if the central government proceeds to exercise every ounce of authority which the Weimar constitution confers upon it there will be very little left to the states.

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[1] The old Reich, as has been said, was made up of twenty-five states (including three free cities), together with the Reichsland or imperial territory of Alsace-Lorraine. This imperial territory was lost to France as a result of the war. In 1919 the two small states known as Reuss (older line) and Reuss (younger line) united into the "People's State of Reuss." A year later seven states, namely, Reuss, Saxe-Weimar-Eisenach, Saxe-Altenburg, Schwarzburg-Rudolstadt, Schwarzburg-Sondershausen, Saxe-Meiningen, and Saxe-Gotha were consolidated into the republic of Thuringia. A portion of the last-named state (Coburg) was joined with Bavaria. So there are now only eighteen states (Länder) in the Reich, namely, Prussia, Bavaria, Saxony, Württemberg, Baden, Brunswick, Oldenburg, Anhalt, Thuringia, Hesse, Mecklenburg-Strelitz, Mecklenburg-Schwerin, Lippe, Schaumburg-Lippe, Waldeck, and the three Free Cities of Bremen, Hamburg and Lübeck. It should be noted that the new constitution uses the term *Länder* (i.e. territories or regions), not *Staaten*, in speaking of these political divisions of the Reich.

How the new constitution can be amended.

Before attempting to explain the chief provisions of the new constitution it may be well to describe how it can be amended. 1. In the first place amendments may be made by a two-thirds vote in both chambers of the national parliament, the Reichsrat and the Reichstag. If, however, the Reichsrat refuses to agree to an amendment which the Reichstag has adopted, the amendment becomes valid in two weeks unless the dissenting chamber asks for a referendum to the people. In that case the amendment does not become operative until the voters approve it at the polls. 2. In the second place, an amendment may be proposed by the people through the medium of an initiative petition and then adopted by them at a referendum election. But the adoption of a constitutional amendment by the people, whether on their own proposal or on the proposal of the Reichstag, requires a majority of the registered voters, not merely a majority of those who go to the polls.

Analysis of the new constitution.

"The German Reich," declares the first clause of the constitution, "is a republic, and all political authority is derived from the people."[2] Every state in the Reich must also be a republic. It must maintain a responsible ministry, and must elect its legis-

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[1] Since the adoption of the constitution some of the states, especially Bavaria and Saxony, have been very restive under this subordination. Bavaria, for example, openly resisted the application of a federal law for the defense of the republic. The Bavarian memorandum of January 8, 1924, is highly significant as disclosing the attitude of this state on the matter of states' rights. A discussion of it may be found in Herbert Kraus, *Germany in Transition* (Chicago, 1924).

[2] The term *Reich* was continued out of deference to popular sentiment. It does not necessarily mean "empire" although it has ordinarily been so translated. In a republican constitution the term means "nation" or "commonwealth." The framers of the Weimar constitution believed the retention

Introductory provisions.

lative body by a system of universal, equal, direct, and secret suffrage according to the principles of proportional representation. Subject to these limitations each state may adopt its own constitution and determine the details of its own state government.

The apportionment of powers between the Reich and the states.

The constitution of the German Reich, like all other constitutions which purport to be federal, is a grant of authority. It gives to the national government a definite enumeration of powers. Whatever authority it does not give, expressly or by implication, remains with the states. But in one important respect it departs from the established practice in other federations. In the constitution of the United States, for example, there is a single list of powers granted to the national government and all such powers are on the same footing. The new German constitution, in contrast to this procedure, conveys jurisdiction to the national government under several different heads, the extent of the authority varying somewhat in each case. In certain matters the Reich is given *exclusive* jurisdiction; in other 1. matters it is given jurisdiction not necessarily exclusive. That 2. is to say, so long and in so far as the Reich does not assume jurisdiction over such matters, the control remains with the states. Then with respect to some other things the Reich is authorized to assume jurisdiction under certain circumstances, for example, whenever it becomes "necessary to establish uniform regulations." 3. Again, the government of the Reich is given the right to "prescribe fundamental principles" which the states 4. must observe in dealing with a variety of matters. In such cases the details are left to be determined by each state for itself. Finally, as regards the important subject of taxation the constitution 5. places virtually no limits upon the authority of the national government. The only restriction is a purely sentimental one, namely, that in using any source of revenue which formerly belonged to the states the national government must "have consideration" for their financial requirements. But what degree of consideration, the constitution does not prescribe. It lays no restriction as to what may be taxed, or upon the rates of taxation, or the methods. So the government of the Reich has a

Types of jurisdiction.

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of *Reich* to be entirely compatible with a republican form of government. And why not? The Germans use the word Frankreich to designate the French Republic.

virtually unfettered power to tax, which is the most far-reaching power that any government can have. Having this, it scarcely needs any others.[1]

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[1] The power-granting provisions of the constitution are as follows:

Article 6

The Reich has exclusive jurisdiction over foreign relations; colonial affairs; citizenship, freedom of travel and residence, immigration and emigration, and extradition; organization for national defense; coinage; customs, including the consolidation of customs and trade districts and the free interchange of goods; posts and telegraphs, including telephones.

Article 7

The Reich has jurisdiction over civil law; criminal law; judicial procedure, including penal administration, and official cooperation between the administrative authorities; passports and the supervision of aliens; poor relief and vagrancy; the press, associations and public meetings; problems of population; protection of maternity, infancy, childhood and adolescence; public health, veterinary practice, protection of plants from disease and pests; the rights of labor, social insurance, the protection of wage-earners and other employees, and employment bureaus; the establishment of national organizations for vocational representation; provision for war-veterans and their surviving dependents; the law of expropriation; the socialization of natural resources and business enterprises, as well as the production, fabrication, distribution, and price-fixing of economic goods for the use of the community; trade, weights and measures, the issue of paper money, banking, and stock and produce exchanges; commerce in foodstuffs and in other necessaries of daily life, and in luxuries; industry and mining; insurance; ocean navigation, and deep-sea and coast fisheries; railroads, internal navigation, communication by power-driven vehicles on land, on sea, and in the air; the construction of highways in so far as pertains to general intercommunication and the national defense; theaters and cinematographs.

Article 8

The Reich also has jurisdiction over taxation and other sources of income, in so far as they may be claimed in whole or in part for its purposes. If the Reich claims any source of revenue which formerly belonged to the states, it must have consideration for the financial requirements of the states.

Article 9

Whenever it is necessary to establish uniform rules, the Reich has jurisdiction over, the promotion of social welfare and the protection of public order and safety.

Article 10

The Reich may prescribe by law fundamental principles concerning: the rights and duties of religious associations; education, including higher education and libraries for scientific use; the law of officers of all public bodies; the land law, the distribution of land, settlements and homesteads, restrictions on landed property, housing, and the distribution of population; disposal of the dead.

Article 11

The Reich may prescribe by law fundamental principles concerning the validity and mode of collection of state taxes, in order to prevent: injury to the revenues or to the trade relations of the Reich; double taxation; the imposition of excessive burdens, or burdens in restraint of trade on the use of the means and agencies of public communication; tax discriminations against the products of other states in favor of domestic products in interstate and local commerce; or export bounties; or in order to protect important social interests.

Article 12

So long and in so far as the Reich does not exercise its jurisdiction, such jurisdiction remains with the states. This does not apply in cases where the Reich possesses exclusive jurisdiction.

The exclusive jurisdiction of the Reich comprises foreign relations, colonial affairs, citizenship and domicile, emigration and immigration, the extradition of offenders, national defence, coinage, tariffs, post office, telegraphs and telephones. Its non-exclusive jurisdiction, on the other hand, covers a much wider range and extends to twenty subjects in all. Its power to assume control in the interests of uniformity extends to the far-spreading subjects of social welfare and public safety—an extension of what Americans commonly call "the police power." Its right to prescribe fundamental principles is spread over a miscellaneous group of matters, chief among which is state taxation.

Mandatory and permissive powers.

From the enumeration given in the foregoing footnote it would seem that the constitution gives to the Reich possibilities of great strength. In point of powers which the national government *must use* it is less generous than the constitution of the United States, but in bestowing authority which the national government *may use*, it goes a great deal farther. So the strength of the Reich will depend, in a very large measure, upon the extent in which it manages to make use of its potential jurisdiction. Conceivably it may leave a large part of its optional authority to the states and content itself with the exercise of its exclusive powers. Or it may gradually extend the scope of its optional authority until the states are virtually reduced to the status of French departments. Whether it will do the one or the other,—whether, indeed, the Weimar constitution will survive long enough to let it do either—is something that only the future can determine. Certain it is that the makers of the new German government were not "states' rights" men. They were not, like the American nation-builders of 1787, afraid of making the national government too strong.

The principle of judicial supremacy.

Whenever a constitution apportions authority among two or more governments it can be taken for granted that controversies will arise from time to time concerning the exact bounds of this apportionment. And some regular means of settling such controversies ought to be provided in advance. The framers of the American constitution did not make such provision, but the Supreme Court of the United States assumed the duty and continues to perform it. The German constitution does not leave the matter as a hostage to fortune. It provides that "if doubt arises, or difference of opinion, as to whether state laws are in harmony with the laws of the Reich," the issue may be referred to a high court of justice (Staatsgerichthof). In other words, the power to declare the unconstitutionality of laws enacted by either the national or state legislatures is not given to the regular courts, as in the United States, but to an extraordinary tribunal which is to be organized as the national legislature may determine. The national legislature has provided that, as a temporary arrangement the high court of justice shall be composed of seven judges, four to be nominated by the Reichstag, two by the supreme judicial court of the Reich (Reichsgericht) and a presiding judge appointed by the President. But thus far the Staatsgerichthof has not functioned.

The structure of the German national government: The President.

Let us now examine the general framework of the German national government. The constitution of 1919 provides for an executive, for a bicameral legislative body, and for a supreme court. The chief executive authority is vested in a President who is directly elected by universal suffrage for a seven-year term, with no restrictions upon his eligibility to re-election. It is rather surprising that the members of the Weimar assembly should have agreed to any such arrangement, for the great majority of them were sincerely desirous of placing the new republic on a permanent basis and the dangers to republicanism which lurk in this provision must have been obvious to them. Still it is doubtful whether much is ever gained by forbidding the re-election of an official whom the people want to keep in office. The founders of the Second French Republic tried that device and it profited them nothing. The German constitution makes no provision for a Vice President, and if a vacancy occurs in the presidential office at any time the executive functions are to be exercised as may be determined by law until an election can be held. Then a new president is chosen for a full seven years, and not merely to fill out the unexpired term.

Ebert's incumbency of this office.

The Weimar assembly elected Friedrich Ebert, a saddlemaker by trade, and a leader of the Social Democrats, to be President of the Reich until a presidential election could be held. It was the general understanding that this election would be held within a year or two, or at any rate as soon as conditions seemed to make an election possible without danger of riot or disorder. Elections for the new Reichstag were held in the summer of 1920 and two general elections took place in 1924. All passed off without mishap, but the government kept delaying the choice of a new president. On one pretext or another it found reason for procrastinating, and eventually the Reichstag passed a law extending Ebert's term to June 30, 1925. Before this date was reached, however, the provisional president died, and no further postponement was possible.

The method of voting for a President.

The constitution does not specify the procedure by which the president shall be elected. It merely provides that the choice shall be made by "the whole German people," leaving the details of nomination and election to be regulated by national law. This law, as it now stands, makes a double election virtually essential, for it provides that a clear majority is necessary to elect a president at the first polling. If no candidate obtains a majority a second polling is held, a fortnight later, and on this occasion a plurality is sufficient.

Hindenburg's election, April, 1925

At the first presidential polling, in March, 1925, there were eight candidates in the field, no one of whom obtained a majority. Two weeks later the field was reduced to three—Field Marshal Paul von Hindenburg, who had the support of the Nationalists and other groups of the Right, former chancellor Wilhelm Marx, a leader of the Center, who had the support of the middle parties and the Socialists, and Ernst Thaelmann, candidate of the Communist party. To the outside world this final election looked like a straight fight between republicanism and reaction, but as a matter of fact there were various other issues involved, among them that frequent deflector of political currents, the issue of religion. Hindenburg obtained a plurality of about a million votes over Dr. Marx and was elected. Although believed to be a monarchist at heart, the new president took the prescribed oath "to preserve the constitution and laws of the Reich." The student of comparative politics will not fail to observe the rather striking similarity between the action of the German people in 1925 and that of the French national assembly in 1873, but whether the outcome will be the same in both cases remains to be seen.[1]

The President of the Reich may be removed by impeachment before the supreme judicial court.[2] This is a departure from

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[1] See *above*, p. 398.

[2] He may also be prosecuted for any criminal offence before the regular courts if the Reichstag gives its consent.

The method of recalling a President from office.

the usual plan of having impeachment heard (as in England, France and the United States) by the upper chamber of the national legislature. The German President may also be recalled from office before the expiry of his term, and this is a novel feature in its application to the head of a national government. In some American states the governor is subject to recall by popular vote (and in one case a governor has been thus removed), but Germany is the first country to provide that the executive head of the nation may be ousted from office in this way. The German recall procedure, however, is somewhat complicated, and involves action by the Reichstag as well as by the people. First the Reichstag must propose the recall by a two-thirds majority. This automatically suspends the President from office. Then the question of removal is submitted to the voters. If a majority of them vote to recall the President he is forthwith removed from office and an election is held to choose his successor. But if the people decline to recall the President, their action operates to re-elect him for a full seven-year term, and the Reichstag which proposed the recall is automatically dissolved. This is an ingenious arrangement, yet an entirely logical one. It is intended to make a President's opponents take due thought before they place the recall machinery in motion. When the Reichstag sets out to get rid of a President it must give its own existence as a surety for success. It is not probable that the recall, in view of this balance-wheel, will ever be incautiously used.

Executive powers of the President.

The President of the German Reich, like the President of the French Republic, is given an imposing list of powers. But in Germany, as in France, the substance of power is emasculated by establishing the principle of ministerial responsibility. The provision in the case of Germany is that "all orders and directions of the President, including those concerning the armed forces, require for their validity the countersignature of the chancellor or of the appropriate minister." And this is followed by the stipulation that such countersignature involves the assumption of responsibility by the chancellor or minister concerned. Subject to this limitation, which is one of vital importance, the President is empowered to execute the laws and maintain public order, to appoint and remove all civil and military officers, to conduct the foreign relations of the Reich, and to make treaties; but "war is declared and peace concluded by national law," in other words the action of the Reichstag is required in both cases.

The President's share in law-making.

Laws do not require the presidential signature in Germany. But, as in France, no law becomes valid until the chief executive promulgates it.[1] Instead of promulgating the law the President of the Reich may refer it to the people, in which case it does not become valid unless the people vote to accept it. At first glance this power to order a referendum on any law might seem to place an important weapon in the President's hands; but in reality it is not of much significance for the obvious reason that he cannot order a referendum without the countersignature of a responsible minister, and no responsible minister could countersign an appeal from a decision of the Reichstag without at once losing the confidence of the latter. If the principle of ministerial responsibility is put fully into operation, as the German constitution intends, it would seem unlikely that the Reichstag will pass any important law which the ministers do not approve. And if the ministers approve, why should one of their number countersign a decree that implies disapproval? Under abnormal circumstances, with a ministry just about to go out of office, it is conceivable that a decree calling for a referendum might be advised, but a President who accepted this advice would be acting contrary to the spirit of ministerial responsibility. So it is not improbable that the executive power to delay promulgation will become in Germany, as it has done in France, a prerogative which is never used. At any rate it has not yet been used in a single instance.

Where the real executive authority is bound to go.

As respects the term, powers, and responsibility of the chief executive, the framers of the German constitution borrowed nothing from the United States. As to term and responsibility, but not as to method of selection, they followed the example of France. They adopted the principle that the President, although chosen directly by the people, as is virtually the case in the United States, should be controlled by parliamentary ministers as in the French Republic. Hence the President of the Reich, like his French prototype, may neither reign nor govern. He seems likely to become a figurehead chief of state. The chancellor, if the Weimar constitution continues unamended and operates according to its tenor, must inevitably become the real chief executive, like the prime minister in France and in England. Yet the President will not be wholly without discretionary power because the Reichstag, like the Chamber of Deputies, is split up into groups, no one of which is able to command a majority. This means that the President may select as his chancellor anyone who can build up a majority bloc, and at times it will happen that several leaders are in a position to do this. To that extent he will have the right to pick and choose his own advisers, but the range of his choice will rarely be very wide. There is also the possibility, and more than the possibility, that the Weimar constitution will be amended to give the President more power. Already some proposals in this direction are being discussed

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[1] This he is required to do within one month unless one-third of the members of the Reichstag petition for delay, in which case he may defer promulgation for two months unless the measure has been declared by both the Reichstag and the Reichsrat to be urgent.

The chancellor.

This brings us to the chancellor who is the German prime minister in everything but name. The constitution provides that he shall "determine the general course of policy and assume responsibility therefor to the Reichstag." Thus he is not merely a senior minister but the directing head of the ministry. He is appointed by the President and then proceeds to make up his slate of ministers. These ministers, with the chancellor at their head, form the national ministry. This ministry as a whole, and each member of it, must have at all times the support of a majority in the Reichstag. The constitution insists upon this point in language that leaves no room for doubt.[1] It is not required that members of the ministry shall have seats in the Reichstag, but in any case they have the right to attend its sessions and to introduce bills.[2] The ministers are given the same privilege as respects sessions of the Reichsrat.

The ministry.

The size of the ministry is not fixed by the constitution. It is determined by the President on the advice of the incoming chancellor. But the number of ministers is ultimately within the control of the Reichstag inasmuch as their salaries have to be voted by that body. At the present time the German ministry consists of twelve members, including the chancellor and the vice-chancellor. The chancellor, unlike the prime minister in Great Britain and in France, does not take immediate charge of any administrative department. He is the general supervisor of all inter-departmental relations. The eleven departments, headed by the remaining members of the ministry, are as follows: foreign affairs, finance, treasury, defence, justice, interior, economics (industry), transportation, posts and telegraphs, food, and labor. In a general way the functions of these various departments are indicated by their respective titles.

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[1] "The chancellor and the ministers require for the administration of their offices the confidence of the Reichstag. Each of them must resign if the Reichstag, by formal resolution, withdraws its confidence." Article 54.

[2] They are also authorized to attend meetings of the Reichstag's committees and to take part in the committee work.

Functions of the ministers.

As in all other countries with parliamentary government, the members of the German ministry have both individual and collective functions. As individual ministers they are responsible for the management of their respective departments. As a body of ministers they are expected to plan the general policy of the government and to prepare the drafts of important measures for consideration by the lawmaking bodies. These two sets of functions logically go together, for it is the administrators who best know what laws are needed and it is they who can most readily provide the leadership in legislation. A failure to recognize this fact is the fundamental weakness in the doctrine of separation of legislative and executive powers. The framers of the German constitution did not adopt this doctrine. They did not set up a system of checks and balances. They provided for executive leadership in legislation by giving the ministers the right to sit, speak, and introduce bills in both chambers. The constitution expressly authorized the ministry to prepare measures and to lay them before the national parliament.

The national parliament.

The German parliament consists of two chambers, the Reichsrat and the Reichstag, but they are by no means intended to be co-equal in legislative authority. In the Weimar assembly there was considerable sentiment in favor of a single chamber, for everyone remembered how the old federal council or Bundesrat had persistently balked the lower House in the years before the war. It had been at all times a citadel of autocracy and reaction. On the other hand the delegates could not ignore the fact that every other great government had a two-chamber parliament, and in the end they decided to retain the bicameral system with the understanding that the upper House would occupy a distinctly subordinate place in the frame of government. So the new constitution preserves the old federal council, considerably altered in organization, greatly reduced in authority, and with a new name.

1. The Reichsrat.

Its composition,

The Reichsrat is made up of ministerial delegates from all the German states and free cities. Each state sends one or more members of its own state-ministry to represent it. It may send as many ministers to the Reichsrat as it has votes in this body, and the votes are allotted in proportion to population—one vote for every million inhabitants.[1] But there are two departures from this rule of representation according to numbers. In the first place it is provided that every state, however small its population, must have at least one delegate in the Reichsrat. In the second place it is stipulated that no state, however large, shall have more than two-fifths of the entire membership. The latter restriction is frankly intended to prevent Prussia, which contains four-sevenths of the entire German population, from acquiring control of a majority in the upper House.

Prussia

The Prussian delegation.

Nor is this the only handicap that is laid upon the leviathan among the German states. Experience in the old Bundesrat had shown that a solid delegation from Prussia, even though it constituted a minority, could acquire control by playing the smaller states against one another. So precautions were now taken to ensure that the Prussian delegation in the Reichstag should not be solid. This was done by providing in the new constitution that only half the quota of votes assigned to Prussia shall be controlled by the Prussian ministry, the other half being distributed among the provincial governments of Prussia.

Outstanding features of the Reichsrat.

The outstanding features in the organization of the Reichsrat are, therefore, first, the representation of the states according to their respective populations, but with a limit upon the quota assigned to Prussia, and, second, the ex-officio membership, each state (or Prussian province) being represented by officials who already hold ministerial or administrative positions. In the old Bundesrat, again, there were three procedural features which gave rise to much criticism. Its sessions were secret; all votes were taken by states (not by individual members); and certain favored states were entitled to the chairmanships of various important committees. In the new Reichsrat all these objections have been removed. Its meetings are ordinarily open to the public; the voting is by individual members as in the United States Senate; and no state possesses any special privileges in the organization of committees.

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[1] The present Reichsrat has sixty-six members, of whom twenty-six are from Prussia, ten from Bavaria, and seven from Saxony. The other states have from one to three members each.

Its share in lawmaking.

In most countries having a parliamentary system the second chamber is merely a revising body. It does not originate much legislation but gets measures after they have passed the popular branch. Its function is to criticize, to suggest amendments, and to make sure that nothing goes through too hastily. This, indeed, is the common argument for a second chamber—that it is a second line of defence against precipitate action. But the German Reichsrat is intended to function, in the main, as a preliminary rather than as a revising chamber. Measures prepared by the ministry go first to the Reichsrat. It may approve them or refuse its approval. If it declines to approve a measure the ministry may nevertheless submit it to the Reichstag accompanied by a statement of the Reichsrat's attitude. Likewise the Reichsrat may itself prepare any measure and submit it to the ministry which must thereupon lay the bill before the Reichstag accompanied by its own approval or disapproval.

Does not enact laws.

But although the Reichsrat is given this power to initiate legislation, the framers of the constitution did not intend that it should have equal authority with the Reichstag in the *enacting* of laws. "National laws," the constitution declares, "are enacted by the Reichstag." They do not require, as in the United States, the concurrence of both chambers. When a measure has passed the Reichstag it does not go to the other chamber for its assent; ordinarily it goes directly to the President and takes effect fourteen days after being promulgated by him. Meanwhile, however, the Reichsrat may file objections with the ministry, whereupon the law must be returned to the Reichstag for reconsideration. Then, if an agreement between the two chambers is not reached, the President may submit the question to the people for their decision at an election. If he does not do so the law fails to become operative unless the Reichstag, by a two-thirds majority, votes to over-ride the objections of the Reichsrat, in which case the President must either promulgate the law or submit it to the people. Thus the Reichsrat has a suspensive veto which can be overcome either by a two-thirds majority of the Reichstag, with the President assenting, or by the people in any case.[1] But the President's personal opinions will not, in any event, be influential in the matter for he must act on the advice of his ministers who, being responsible to the Reichstag, will naturally side with that chamber in all controversies. The Reichsrat is given no special prerogatives such as the trial of impeachments, the confirmation of appointments, or the ratification of treaties.

2. The Reichstag.

The Reichstag was not the dominating branch of the German imperial parliament prior to 1918, but the new constitution clearly endeavors to make it so for the future. It is composed of members elected for a four-year term. The constitution requires that the suffrage shall be "direct, equal, secret, and universal"—which means that there can be no indirect elections, no four-class system, no oral voting, no exclusion of women. Members of the Reichstag do not represent single-member constituencies as in the English House of Commons and the American House of Representatives. A system of proportional representation, commonly known as the Baden system, was established by law in 1920, and is used in determining the elections.[2] The details of this system are somewhat confusing, but its general outlines may perhaps be made clear without spending too much time on the matter.

How members are elected.

First of all, the whole of Germany is divided into thirty-five districts, each of which elects one member of the Reichstag for every 60,000 votes cast at the election. Thus the size of the House is not fixed in advance of the election nor is a definite number of seats assigned to each district. Each political party, or indeed any group of voters, may nominate a list of candidates for the electoral district and may include in this list any number of candidates. Ballots containing these district-lists are then printed. The voter, when he goes to the polls on election day, does not express his preference for individual candidates but must vote for an entire list or ticket. Each political party also puts forth a union list, and a national list for the whole country (as will presently be explained), but these lists are not presented to the voters at the polls. Then, when the ballots are counted, each district list is allotted one seat for every 60,000 voters who have expressed their preference for it. If, for example, the Social Democratic list has been chosen by 182,000 voters in one of the thirty-five districts, the three first candidates on this list are declared elected; if the Communist list has polled 63,000 votes, the candidate whose name stands first on it is declared elected.

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[1] The matter may be made somewhat clearer, perhaps, in this way: When the Reichstag has passed a measure by a majority vote the following things may happen:

1. The Reichsrat may file no objections, in which case the law is promulgated in due course by the President and becomes operative.
2. The Reichsrat may file objections, whereupon the measure goes back to the Reichstag for reconsideration, and the latter may:
   (a) recognize the objections and amend the bill to meet them, in which case it becomes a law.
   (b) disapprove the Reichsrat's objections by less than a two-thirds vote, in which case the President may refer the issue to the people for their decision, or if he fails to do so, it does not go into effect.
   (c) disapprove the objections by a two-thirds vote in which it goes into effect unless the President refers the issue to the people for their decision.

[2] It replaced the Hondt plan which had been used in the election of the constitutional convention.

The districts and the lists.

Distributing the surplus votes.

But this is only the first step. What about the surplus votes, the fractions of sixty thousand? To the end that these may be proportionally counted the thirty-five election districts are grouped into seventeen unions and the surplus votes of each party ticket in the two or more districts within the union are combined. If, when so combined, the surplus exceeds 60,000 votes, the party gets an additional member. Here, again, there may be some votes to spare, and the theory of the system is that none go to waste. So the surplus votes of each party ticket in the seventeen unions are combined for the Reich as a whole, and a further allotment of seats is made to the national lists on the basis of one member for every 60,000 surplus votes. The elected candidates are taken from the top of the list downward. Finally, if a surplus of votes still remains, every fraction over 30,000 entitles the party to another member. The law provides, however, that no party may be given more seats by combining its surplus votes in the unions and in the whole country than it has already elected in the thirty-five districts.

The general theory of the Baden plan.

The Reichstag is thus made up of members elected by districts, by unions, and by the country at large. Each major political party prepares a ticket for the whole Reich and one for each of the thirty-five districts. Lists for the seventeen unions are made by combining the district lists of the party. Bear in mind that the voter, in casting his ballot for the district list, merely registers his affiliation with one of the various parties without indicating any preference as to individual candidates. The system assumes that the voter is interested in policies, platforms, principles—not in personalities. It also assumes that candidates whose names come first on each list are the ones whom the party most desires to have elected.

Its actual workings.

In its actual workings this plan of proportional representation gives a great advantage to the political parties which are organized on a nation-wide basis. It discourages purely local parties, inasmuch as surplus votes cast for any party cannot be counted unless it has union lists and a list for the Reich at large. The provision that no party may be given more seats at large than it has already won in the districts is also a handicap upon the weaker parties. Nevertheless, at the general election of December, 1924, seven parties obtained representation in the Reichstag and on the whole the final apportionment of seats turned out to be tolerably in accord with the preferences of the people.

How an election is held.

Elections for the Reichstag are held throughout Germany on the same day. This election date must be a Sunday or a national holiday. The electoral law provides for the establishment of an election board in each district, also boards for the unions, and a board for the Reich. The district boards are responsible for preparing the register of voters and are allowed to devise their own methods for performing this function. In most districts no registers are provided at the polls; the authorities merely give each voter a certified card which identifies him and entitles him to vote without any further question. A duplicate of this card is kept by the registrars. The ballots are printed by the party organizations, but plain envelopes are provided at the polls for the use of the voters. Each voter, when his name has been checked in the poll book, or his card taken, enters the voting booth, puts his "list" in the envelope, seals it, and hands it to the officer in charge of the poll. Men and women vote at the same polling places.[1]

Disputed elections.

Disputed elections are not determined by the regular courts, as in England, nor yet by the legislative body itself, as in the United States. Provision is made for a joint electoral commission composed of the members of the Reichstag and judges of the highest administrative court. The former are designated by the Reichstag, the latter by the presiding judge of the court. This joint electoral commission not only determines the validity of any contested election but decides whether any member has forfeited his seat. Its decisions are not subject to review or appeal.

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[1] At the election of 1920 they voted at different polls in order to determine their relative strength in the various parties. As it turned out, the women voted most strongly for those parties which had consistently opposed the granting of the suffrage to them.

The Reichstag's sessions.

The Reichstag meets annually in regular session on a date fixed by the constitution (the first Wednesday in November), but it may be summoned by the President at an earlier date and must be so called if at least one-third of the members demand it. The President may dissolve the Reichstag on the advice of the chancellor, but there can be only one dissolution for the same cause, and every dissolution must be followed by an election within sixty days. The President cannot adjourn the Reichstag or close its session otherwise than by dissolving it. The foregoing provisions, it will be noted, differ from those which exist in England, France, and the United States.[1]

Its system of committees.

The Reichstag adopts its own rules of procedure, chooses its own presiding officers, and appoints its own secretaries. The pay of its members is left to be regulated by law. The rules of procedure which have been adopted are not unlike those of other parliamentary bodies except that the method of selecting committees is wholly different from that pursued in England and in America. The basis of selection is the party group. Each party group (if it comprises not fewer than fifteen members) nominates one or more members of every committee according to the principles of proportional representation. In other words, if a committee has twenty-one members a party controlling one-third of the Reichstag would be given seven committeemen. This means that the majority bloc will have a majority on every committee.[2] All important measures, besides being referred to committees, are considered by the members of each party at a caucus. If the

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[1] In England the crown, on the advice of the cabinet, may prorogue or dissolve the House of Commons at will. In France the President, on the advice of the ministry, may adjourn both chambers, and with the concurrence of the Senate may dissolve the Chamber of Deputies, but has not done this for nearly fifty years and is not likely to do it. In the United States the President may neither adjourn, prorogue, nor dissolve the House of Representatives under any circumstances.

[2] It was not so in the old Reichstag where committees were indirectly selected by lot.

Caucus

bill be one of great importance, two or more party groups sometimes meet together in a joint caucus with a view to reaching a common course of action. The parties which form the controlling bloc meet in joint caucus frequently. These caucuses, whether of single parties or of blocs, give instructions to their representatives on the committees. Hence the deliberations of the Reichstag as a whole are virtually controlled by these caucuses. Before the issue comes to a vote on the floor of the House, everything is already settled. The vote in the House is merely a ratification of what has already been decided upon by the party groups.[1] Thus, as one writer has remarked, a German ministry is rarely defeated; it merely retreats. If the caucus insists, the ministers alter their policy or resign, and when they have satisfied the caucus they have nothing to fear in the House.

How bills are considered.

Most of the important measures are introduced by the ministry with the approval of the Reichsrat or with various amendments proposed by it. But measures may also be laid before the Reichstag by its own members. In either case the bill goes to a committee and may be considered at once, but if it be very important the committee waits until the caucuses have acted upon it. The work of the Reichstag committees, for this reason, is of smaller consequence than is the work of legislative committees in England or the United States. There are only a few regular committees, namely, a committee on foreign affairs (which is made mandatory by the constitution), on rules, on petitions, on commerce and industry, on finance, on justice, and on the budget. In addition there is a committee which sits while the Reichstag is not in session and "protects the right of popular representation." From time to time, as occasion arises during its sessions, the Reichstag also appoints special committees and it may at any time set up committees of enquiry with the right to investigate any branch of the administration.

The debates.

Debates in the Reichstag bear outwardly a close resemblance to those in the Chamber of Deputies. This is because of the physical setting. The seats are arranged in a semicircle; with the conservative groups sitting at the right and the radical groups at the left. There is a tribune at the front of the chamber and each member who addresses the house must do it from this platform. The speeches, for the most part, carry little weight with the Reichstag inasmuch as every important question has already been settled in the caucuses. What is said from the tribune is for public consumption. The old Reichstag was a tolerably well-behaved assembly and rarely got out of hand, but its successor has been much more turbulent. Sessions are open to the public, but by a two-thirds vote the House may order its galleries to be cleared. The Reichstag elects its own presiding officer and the maintenance of order, not only in the chamber but in the whole building, is entrusted to him.

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[1] When voting, the "Ayes" rise and the "Noes" remain seated. If the result is doubtful, each side passes through doors provided for the purpose, as in the British House of Commons. Any fifty members may demand a record vote by ballot. No proxies are permitted as in France.

Questions addressed to the ministers.

Members of the ministry may attend all sittings of the Reichstag and seats are reserved for them.[1] They may speak on any question at any time, even though by so doing they interrupt the regular order of business. Any member of the Reichstag may address questions to the ministers, but these questions must be in writing, and they are answered by the reading of a written reply. No discussion or vote follows. Questions are propounded in large numbers and the reading of the answers takes a good deal of the Reichstag's time. As many as fifteen or twenty replies are sometimes read at a single sitting. It is a tedious performance because the questions often concern trivial matters in which most of the members are not at all interested.

Interpellations.

Nothing is said in the constitution with respect to interpellations, but the rules of the Reichstag provide that an interpellation may be addressed to the ministers by any thirteen members. As a matter of practice, they are rarely proposed except after caucus action by some one or more of the party groups. When an interpellation is filed with the presiding officer, he transmits it to the minister whom it concerns, and the latter in conference with him fixes a date for the discussion. The minister may refuse to accept an interpellation but this he never does unless reasons of state make a public discussion of the matter inadvisable. So the interpellation is set down on the Reichstag's calendar and a reply is made by the appropriate minister when the time comes. Thereafter no debate ensues unless at least fifty members demand it. If this demand is made a debate begins and continues until every member who desires to speak has spoken. But no vote is taken to close the debate, as in France. The Reichstag, having talked itself out, automatically passes to the next item on the calendar. Hence, unlike the Chamber of Deputies, it does not use the interpellation as a means of ousting ministers, but merely as an opportunity for the various party leaders to declare their attitude upon questions of public interest. If it is desired to overthrow the ministry a resolution plainly expressing want of confidence can be introduced at any time.

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[1] They have also, as has been said, the right to attend committee meetings.

The initiative and referendum in Germany.

The framers of the German constitution took rather kindly to the initiative and referendum. They made provision whereby both might be used. Bills may be initiated by petitions bearing the signatures of at least one-tenth of the qualified voters. Such bills, unless enacted into law without amendment, must be submitted to a referendum at the polls. A majority of those actually voting is sufficient for the adoption of a law; but for amendments to the constitution a majority of all the registered voters is required. A referendum may also be had on any measure passed by the Reichstag if at least one-third of the Reichstag's members demand that its promulgation be deferred for two months, and if, in this interval, one-twentieth of the qualified voters petition to have the measure submitted to the people.[1] Finally, the President of the Reich may withhold the promulgation of any law until the people have accepted it at a referendum.[2]

The dangers involved.

From the nature of things, however, the initiative and referendum cannot be very freely used. In Germany there are about thirty million registered voters. An initiative petition would therefore require three million signatures and a petition for a referendum would need at least half that number. Obviously there will not be much popular participation in the making of the national laws. Thus far the plan has been used only once,—in an abortive attempt to confiscate, by constitutional provision, the property of the former ruling families. The wisdom of the arrangement may well be doubted, for the mechanism is too cumbrous for ordinary lawmaking; on the other hand it embodies a potential danger to the continuance of the republic. It provides the monarchists with a potential means of riding back into power on a passing wave of Nationalist sentiment. If there had been a provision of this sort in the constitutional laws of France forty years ago it is not improbable that the Boulangists would have utilized it to replace the Third Republic by a military dictatorship with disastrous results both to France and to the peace of the world.[1]

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[1] A referendum may not be ordered on the tax laws, however, or on the budget, or on the classification and payment of public officials unless the President authorizes it.

[2] See *above*, pp. 629-630.

The German judiciary: 1. The regular courts.

The German constitution provides for two classes of tribunals —ordinary courts and administrative courts. Ordinary jurisdiction is exercised by a national supreme court (Reichsgericht) and by the courts of the various states. There are no subordinate federal courts as in the United States. The state courts possess original jurisdiction in all matters arising under state and federal laws alike, but the Reichsgericht is the court of last resort. The constitution provides that this supreme judicial court shall be organized in such manner as may be provided by law, but stipulates that all judges of ordinary jurisdiction shall be appointed for life. The Reichsgericht is a large body of judges, and like the court of cassation in France does its work in sections. As has been indicated, it does not have power to declare the unconstitutionality of laws. This function is given by the constitution to a special high court of justice, which, as already mentioned, has not yet been permanently organized.[2]

2. The administrative courts.

Provision is also made for a system of state and national administrative courts, "to protect the individual against orders and decrees of the administrative authorities." The constitution does not stipulate how these courts shall be organized or what their jurisdiction shall be; everything is left to be determined by law. But there was a system of administrative law and administrative courts during the imperial régime. They functioned as in other continental countries and were regarded as affording a much-valued protection to the liberties of the citizen. The framers of the new constitution assumed that they would be continued and thus far the laws have made very little change either in administrative jurisprudence or in the structure of the administrative courts. In a general way the system resembles that of France and hence does not require further discussion here.[3]

The bill of rights.

A large part of the new constitution is devoted to an enumeration of the fundamental rights and duties of German citizens.

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[1] *Above*, pp. 493-494.
[2] See *above*, p. 622.
[3] *Above*, pp. 534-547.

This bill of rights is the principal feature drawn from the American constitutional system. In some cases the terminology is borrowed almost literally—for example, the provision, that "no ex post facto law shall be passed," that private property may not be taken for public use except "by due process of law" (auf gesetzlicher Grundlage) and "with just compensation" (angemessene Entschädigung). On the other hand, the German bill of rights is more specific than the American, and it differs in its grouping of political precepts with economic guarantees. "All Germans" (not all persons, be it noted) are declared to be "equal before the law." Privileges and discriminations arising out of birth, rank, and sex are abolished. So are all titles of nobility, and titles of every other sort except those which designate an office, a profession, or an academic degree.[1] No German may accept a title or order from any foreign government. This prohibition goes farther than the corresponding one in the constitution of the United States which forbids the acceptance of foreign honors or emoluments by government officials only, and permits even this with the consent of Congress. Various other old institutions and practices were swept away at Weimar. The maintenance of an established church is forbidden. Private schools, as substitutes for public schools, are prohibited except with the approval of the government. Private preparatory schools are forbidden altogether.

The saving clause attached to some of the guarantees.

The German bill of rights does not restrict itself to prohibitions alone. It asserts a long list of fundamental civic rights that must not be infringed—for example, the right to freedom of emigration, freedom of speech, and freedom of the press. But in many instances it takes the heart out of these constitutional guarantees by adding that "exceptions may be made by law," or words to that effect. The constitution declares, for example, that "the house of every German is his sanctuary and is inviolable"—a Teutonic adaptation of the old adage that an Englishman's house is his castle. But the German bill of rights adds a provision that exceptions to the rule may be made by authority of law and thereby softens the rigor of this constitutional guarantee. It is not to be assumed, however, that the framers of the German constitution failed to appreciate the true significance of their action in this regard. They probably realized full well what they were doing when they provided that various constitutional rights might be infringed by authority of law if necessity should arise. Their idea was to enunciate certain principles which seemed to them to be worthy of observance under ordinary conditions, but it was not their intention that these principles should be absolutely binding upon the national parliament in all cases whatsoever.

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[1] An exception is made in the case of orders and decorations conferred for services during the years 1914-1919. Article 175.

Merits of this action.

There is something to be said for this point of view. When the guarantees incorporated in a bill of rights are too comprehensive, and stand in the way of what the legislature earnestly desires to do (especially in war time), then it is reasonably certain that some means of narrowing or weakening the guarantees will be found—usually by judicial interpretation. That is what has happened in the United States. The stipulation that Congress shall make no law abridging the freedom of speech, or of the press, does not now mean what it says. It means that Congress may abridge freedom of speech and of the press to the extent that the national security requires, in other words that exceptions may be made by law when the exigencies so demand. The main difference is that in Germany the question whether there is need for an abridgement rests with the Reichstag; in America it is ultimately settled by the courts.

An English translation of the new German constitution, by William B. Munro and Arthur N. Holcombe, was published by the World Peace Foundation (Boston, 1920) This translation is also printed as an appendix in Brunet's book (see *below*) and in Bouton's book on the imperial abdication (see *above*, p. 612). Somewhat different renditions may be found in H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1922) pp. 167-212, in George Young, *The New Germany* (New York, 1920), and in Otis H. Fisk, *Germany's Constitutions of 1871 and 1919* (Cincinnati, 1924). The last-named volume is valuable in its comparison of the various drafts which were laid before the Weimar assembly.

Of commentaries on the new constitution there is an abundant supply. The most convenient for student use is Karl Pannier, *Die Verfassung des Deutschen Reichs vom 11 August, 1919* (in Reclam's Universal Bibliothek, Leipsic, 1919), but mention should also be made of Conrad Bornhak's *Die Verfassung des Deutschen Reichs* (2nd edition, Munich, 1921), and of volumes bearing the same title, by Godehard Ebers (Berlin, 1919), by Fritz Stier-Somlo (2nd edition, Bonn, 1920), by Gerhard Anschütz (Berlin, 1921), and by Otto Bühler (Berlin, 1922). Special mention should be made of René Brunet's *La constitution allemande du 11 août, 1919* (Paris, 1921) of which there is an English translation by Joseph Gollomb (New York, 1922). This book may profitably be studied, side by side, with Otto Meissner's *Das neue Staatsrecht des Reichs und seiner Länder* (Berlin, 1923). A volume on *The Constitution of the German Republic,* by H. Oppenheimer (London, 1923) also deserves mention. A good brief survey may be found in Malbone W. Graham's *New Governments of Central Europe* (New York, 1924), pp. 32-72.

CHAPTER XXXIII

GERMAN POLITICS AND PROBLEMS OF TODAY

> Constitute government how you please, infinitely the greater part of it must depend upon the exercise of powers which are left at large to the prudence and uprightness of ministers of state. Even all the use and potency of the laws depends upon them. Without them your commonwealth is no better than a scheme on paper; and not a living, active, effective, organization.—*Edmund Burke.*

The most novel feature in the new constitution.

The most striking feature of the new German constitution is not its provision for direct legislation or its elaborate bill of rights. Its most novel feature is the attempt to connect political and economic power by making a recognized place for a hierarchy of industrial councils. To understand this action it must be borne in mind that although Germany before the war was not a democratic country, she was to a greater extent than any other great nation, a socialized state. Public ownership, social insurance, and the regulation of industry by law had been carried to a farther extent there than elsewhere. It was therefore not difficult for the people, on the morrow of the revolution, to grasp the conception of a government which would take over the control of all economic life. The Independent Socialists wanted this done forthwith, after the Russian fashion. The Social Democrats desired that it be done by easy stages and after careful deliberation at each step. In the end the Social Democrats had their way, but subject to a promise that the new constitution would provide for workers' councils and some sort of economic parliament. This agreement was in the nature of a compromise between the orthodox plan of political representation and a scheme of vocational representation on the soviet principle. It was a compromise, however, in which the friends of purely political representation managed to secure by far the better of the bargain.

The Weimar assembly decided to establish a parliament of

Article 165.

the political type, organized on a basis of geography, not vocations. It had no difficulty in reaching this decision by an overwhelming majority. But it nevertheless proceeded to carry out the promise made by the Social Democratic leaders during the revolution by inserting provision for workers' councils and economic councils which should exist and function parallel with the political organizations although not with equal powers. Hence the framing of Article 165 which is not only the longest but the most interesting provision that the new German constitution contains. This article frankly recognizes the principle that all matters relating to wages, working conditions, and the entire development of industry should be regulated by a series of workers' and economic councils in which the wage-earners and the employers should be represented on equal terms. The plan cannot be more concisely described than in the words of the constitution itself:

> "Wage-earners and salaried employees are entitled to co-operate on equal terms with the employers in the regulation of wages and working conditions, as well as in the entire economic development of the productive forces. The organizations on both sides and the agreements between them will be recognized.
>
> "The wage-earners and salaried employees are entitled to be represented in local workers' councils, organized for each establishment in the locality, as well as in district workers' councils, organized for each economic area, and in a national workers' council, for the purpose of looking after their social and economic interests.
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> "The district workers' councils and the national workers' council meet together with the representatives of the employers and with other interested classes of people in district economic councils and in a national economic council for the purpose of performing joint economic tasks and co-operating in the execution of the laws of socialization. The district economic councils and the national economic council shall be so constituted that all substantial vocational groups are represented therein according to their respective economic and social importance.
>
> "Drafts of laws of fundamental importance relating to social and economic policy, before introduction into the Reichstag, shall be submitted by the ministry to the national economic council for consideration. The national economic council has the right itself to propose such measures for enactment into law. If the ministry does not approve them, it shall, nevertheless, introduce them into the

Reichstag together with a statement of its own position. The national economic council may have its bills presented by one of its own members before the Reichstag.

"Supervisory and administrative functions may be delegated to the workers' councils and to the economic councils within their respective areas.

"The regulation of the organization and duties of the workers' councils and of the economic councils, as well as their relation to other social bodies endowed with administrative autonomy, is exclusively a function of the Reich."

An explanation of the article.

In other words the wage-earners and salaried employees are to be organized locally into workers' councils; these councils in each economic area are to be represented by delegates in a district council, and these district councils, in their turn, are to choose delegates to a national workers' council for the whole Reich. The employers, on the other hand, are also to organize district and national associations. Then both the workers' councils and the employers' associations are to coöperate, on equal terms, in district economic councils and in a national economic council. This last-named body is intended to be a sort of economic parliament, but with no such wide and final powers as were proposed in England by the Webb plan.[1] Its functions are for the most part advisory. When the national ministry prepares any law of fundamental importance relating to social or economic policy it is required to submit the measure to the national economic council before introducing it in the Reichstag. But if the measure be disapproved by the national economic council it may nevertheless be presented to the Reichstag and passed by that body. On the other hand the national economic council may itself prepare a draft of any such measure and may submit the same to the Reichstag either directly or through the ministry. Thus the national economic council, within its own field, is given much the same right of initiative as is accorded the Reichsrat; but it has no suspensory veto on laws such as the latter possesses.[2]

The provision that supervisory and administrative functions may be delegated by the national government to both workers' councils and economic councils is intended to admit these bodies

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[1] See *above*, pp. 255-256.

[2] *Above*, p. 630, footnote.

The part which these councils are expected to play in the socialized state.

to an active share in the work of socializing the German industries whenever this socialization takes place. The power to take over private business enterprises and operate them under public ownership is expressly given to the national, state, and municipal governments by the constitution, or, if they do not choose to undertake public ownership, these governments are empowered "to secure a dominating influence in any other way" —for example, by becoming majority stockholders in private business concerns.[1] The framers of the constitution felt that it would be difficult, and probably unwise, to have the government take over, supervise, and directly administer the management on industries through its own employees. Hence the provision that it may use the various councils as part of its socializing machinery by devolving the detailed work of management upon them.

Organization of the councils.

The constitution does not set forth in explicit terms the methods by which the various councils are to be organized, or their functions, or the limitations upon their authority. These matters were left to be determined by national laws and decrees. It soon became clear, however, that any attempt to organize the whole system of councils, from bottom to top, would take many months and perhaps years of deliberation if the task were to be rightly performed. On the other hand various groups in the Reichstag were crying for some immediate action. So it was decided to make a beginning by creating a part of the system, and early in 1920 provision was made for the organization of the local workers' councils. A few months later a decree was issued establishing a provisional organization for the national economic council, with powers almost as broad as those indicated for it in the constitution, and with the additional duty of working out a plan for a permanent organization. In connection with the latter it was to suggest the method of organizing the intermediate or district councils. Although nearly five years have since passed, the national economic council is still functioning on this provisional basis.

How the national economic council is constituted.

As at present constituted the national economic council is composed of 326 members. They represent both the workers and the employers in the various fields of economic productivity, together with the consumers, government employees, and the government itself. In all there are ten groups represented.[1] In the first eight of these groups the representatives were chosen by the executives of organizations specified in the decree which created the council; in the last two groups they were appointed by the Reichsrat and the ministry respectively. Agriculture, for example, was given sixty-eight representatives, divided among the agricultural employers, the agricultural laborers, the small farmers, and the agricultural societies. These representatives were chosen by such bodies as the German Land Union, the German Agricultural Laborers' Association, and so forth. Men and women were alike made eligible to serve as members of the council, and some women were chosen. As finally constituted, indeed, the national economic council presented a fairly good reflection of German economic life.

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[1] Article 156.

The council's powers.

The council is not an economic parliament in the true sense. Its powers do not parallel those of the Reichstag; it has no power of independent legislation in economic matters. In general its chief function is to receive from the ministry such government measures as are of an economic character and to consider these measures before they are acted upon by the German parliament. When an economic measure is brought forward by the ministry it goes first to the national economic council where it is referred to the appropriate committee. From the committee, after careful study, it is reported to the whole council where it is debated and voted upon. The votes are recorded by groups and not by totals because the council's functions are advisory and it is desirable that the political authorities should know the attitude of the several groups on

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[1] These groups are as follows:

I.	Agriculture and Forestry	68 members
II.	Gardening and Fishing	6 "
III.	Industry	68 "
IV.	Commerce, Banking and Insurance	44 "
V.	Transportation and Public Utilities	34 "
VI.	Handicrafts	36 "
VII.	Officials and Professions	16 "
VIII.	Consumers	30 "
IX.	The German States (nominated by the Reichsrat)	12 "
X.	The German Nation (nominated by the ministry)	12 "
	Total	326 members

each project. When the consideration is finished the opinions of the council are reported to the ministry and made known to the two chambers, Reichsrat and Reichstag, for their information in acting upon the measure. The council is also empowered to initiate proposals of legislation on economic subjects, and to submit these to the ministry, but it has not yet been given a formal right to have its proposals laid before the Reichstag by the council's own members, as the constitution intended.

Its work.

Since its establishment the council has had many projects referred to it, some of them highly important. These have related to such matters as railway rates, the regulation of waterways and harbors, the relief of unemployment, the hours of labor in industry, and many questions of a similar import. In addition the council has put forth many projects on its own initiative, some of which have been accepted by the ministry, introduced into parliament, and enacted into law. The debates and votes have shown that the representatives of the consumers and of the government (that is, the last three of the ten groups) often hold the balance of power inasmuch as the representatives of the employers and of the workers are about evenly divided. Complaint is made by the workers that these neutral groups usually side with the employers. Certain it is that they exercise a notable influence in the council and have contributed much to elevate the tone of the discussions. Complaint is also made, however, that the national economic council is rapidly developing into a political body like the Reichstag, with the same factional groupings. It would seem that this must inevitably be the case, for you cannot eliminate politics from a policy-determining body by merely calling it "economic" or by providing that its members shall be chosen in some newfangled way. The determination of public policy must inevitably be a political matter in the accustomed sense of the term.

Why it has not accomplished more.

The work of the council has been considerably handicapped by the jealousy of various groups in the Reichstag, by the unfriendly or non-coöperative attitude of some of the ministers, and also by the fact that a good deal of economic reconstruction had already been accomplished before the national economic council was established. The depreciation of the German currency, moreover, and the reparations embroglio created situations which no body of men could easily cope with, howsoever they may have been chosen. In the matter of socializing the great industries, furthermore, the Reichstag went ahead before the council came into existence. It dealt with the railroads and with the housing problem. In 1919 it passed a "blanket law" laying down the principles according to which the gradual socialization of German industry was to be accomplished. These principles were, on the whole, rather conservative, and did not give countenance to any rapid progress in the direction of collectivism.[1]

Before the national economic council came into existence, moreover, the Reichstag had passed laws providing for the extension of collective control (in a somewhat limited way) to the coal, potash and iron industries.[2] It also authorized the socialization of electrical plants and authorized the municipalities to take over (with compensation to private owners) various utilities including not only waterworks, gas plants and street railways but theatres, motion picture houses and undertaking establishments. To some extent the municipalities have made use of these powers, but there has been no headlong rush into either public ownership or collectivist control.

Present status of the socializing movement.

Public opinion in Germany has been badly divided on the question of abolishing private industry and replacing it by state socialism or collectivism. The communists, and more extreme socialists, naturally, desire that this policy be put into operation immediately and on a general scale. The moderate socialists desire that it be brought into operation gradually, one industry at a time. The more conservative parties in the Reich do not favor the policy at all. They desire to retain the old system of privately-controlled industry in a liberalized form. At the Reichstag elections of 1924 there was a swing toward conservatism, although not as strongly so as had been anticipated, and the presidential election of 1925 gave new vigor to the old guard. The government, therefore, does not feel inclined to speed up the process of socialization. What the future trend will be, it is not possible to say. But it seems certain that no rapid overthrowing of private industrial control is to be expected during the next few years unless some quite unexpected shift in German politics occurs. The German revolution has turned out to be largely political, not economic.

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[1] A full account of the work performed by the council may be found in Herman Finer's *Representative Government and a Parliament of Industry* (London, 1923).

[2] The mechanism of this collective management, under the supervision of the national minister of economics, is quite elaborate. In the case of coal the most important controlling authority is a national coal council made up of owners, workers, coal dealers, and representatives of various interests which are consumers of coal (e.g. the railroads).

The German party system.

The history, organization and aims of the various political parties in Germany ought to have some consideration. The subject is one that could not appropriately be discussed in an analysis of the new constitution, for that document contains no mention of political parties. It does not even refer to them by implication. That is characteristic of constitutions. The men who frame them are party leaders; they know full well that political parties are important factors (for good or ill) in the work of democratic government; yet they invariably ignore parties in the work of constitution-making. This is because of their bondage to legalism. They are obsessed with the idea that since parties are unofficial organizations they are not integral features of the governmental mechanism, and therefore should not be given any recognition in the fundamental law. So they ignore the party system altogether. It need hardly be added that by this action they in no wise impair the strength of the political parties or weaken their influence upon the course of governmental policy.

Parties during the imperial epoch.

Under the old Reich there were several political parties or factions in Germany. As in other continental countries they ranged from right to left, exemplifying all degrees of conservatism and radicalism. At the extreme right were the Agrarians and Conservatives. They drew their strength chiefly from the over-represented rural districts and were the most stalwart supporters of the old bureaucratic system. They did not have a large delegation in the Reichstag but their influence was usually greater than their numbers indicated, for they were solidly united and had a definite policy. Then came the Free Conservatives who had split off from their more reactionary brethren, and next to them the Center or clerical party which was brought into being as a result of Bismarck's controversy with the Catholic Church during the late seventies. The Center remained in existence after this controversy had come to an end; it gained somewhat in numbers and often held the balance of power in the Reichstag. The main strength of this party lay in the Ruhr, in Bavaria, and in the other South-German states where the population is largely Catholic.

Moving farther to the left were the Progressives and the National Liberals, both drawing their chief strength from the middle classes of the population. Finally, there were the Social Democrats who occupied the extreme left before the war.[1] These six factions, together with a scattering of irreconcilables[2] made up the party fabric of the old Reichstag. In the Reichstag which was elected in 1912 (two years before the outbreak of the war) the Center had the largest single delegation—about one-fourth of the entire membership. Government was carried on by a bloc representing the middle parties. Not a single avowed Social Democrat was ever admitted to a share in German administration prior to 1914.

The re-alignments in 1919, and the elections to the constitutional assembly of that year.

No general election took place in Germany during the war period. The Reichstag of 1912 prolonged its own existence until the armistice. Then, with the revolution, it was deemed to have passed out of existence. Early in 1919 elections were held for the constitutional assembly, and in this campaign most of the old parties appeared under new names. The Conservatives appeared as the Nationalist party. The Free Conservatives and most of the National Liberals became the German National People's party. The Center continued in existence but was now officially designated as the Christian People's party. The old Progressives, with the more radical Liberals, became the German Democratic party. The Social Democrats continued to be known as such, and the Independent Socialists became a factor in German politics. Thus there were six political groups in the Weimar assembly, the same number that there were in the old Reichstag. The constitution, as has been said, was put through by a coalition of the middle groups, leaving out the Nationalists at the extreme right and the Independent Socialists at the extreme left.

The election of 1920.

But this coalition did not long hold together. In 1920 the first general election under the new constitution was held and the various groups resumed their freedom of action. At this election the Nationalists and the People's party made substantial gains at the expense of the Democrats. The Independent Socialists, having somewhat mollified their revolutionary program, cut into the ranks of the Social Democrats. The Communists also displayed some strength. In other words the extremists gained upon the moderates. But the Social Democrats remained the largest party in the Reichstag, with a delegation of one hundred and twelve members—about a third of the whole.[1] Successive ministries were formed during the next four years, each of them representing some bloc of the middle parties, but the various problems connected with reparations, taxation, inflation of the currency, and the French occupation of German territory proved beyond their power to solve. This shifting of blocs and of ministries kept on until the spring of 1924 when the Reichstag was dissolved and a new election held.

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[1] The Independent Socialists, further to the left, did not organize themselves until 1916.

[2] Some Poles, Alsatians, Danes and others who were not reconciled to German rule and usually opposed all government measures of whatever sort.

The first election of 1924.

It was made apparent, during this interval of four years, that the middle parties, especially the Social Democrats, were losing their hold on the country. The Nationalists with some success were endeavoring to rouse popular resentment against the foreign policy of the middle groups, a policy which involved compliance with various demands of the Allied powers. The Communists, at the other extreme, sought to capitalize the disappointment of the wage-earning classes who had confidently hoped to get more out of the revolution than they were obtaining. The general expectation was that both of these extreme wings would gain heavily at the first election of 1924, and they did gain, but not so heavily as was anticipated. The middle parties retained control of a majority in the Reichstag but could no longer muster the two-thirds vote of that body which the constitution requires in certain contingencies. It therefore became necessary to dicker with the Nationalists for their support, and this was done. The various measures which became essential under the so-termed Dawes plan of financial rehabilitation were put through the Reichstag by means of Nationalist votes. Not all the Nationalists gave their adhesion to this plan but a sufficient number of them joined the middle groups when the crucial vote was taken.

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[1] In 1922 the right wing of the Independent Socialists fused with the Social Democrats as the United Social Democratic party, while the left wing joined the Communists.

The May election of 1924 left the German political situation in a state of very unstable equilibrium. The extremists were too strong to let the middle groups control. On the other hand they were not willing to help maintain a coalition except at a price which the Social Democrats were unwilling to pay. It soon became apparent, therefore, that another appeal to the country must take place, and in December, 1924 a new election was held. The result of this election did not help matters much, for although the extreme Right and the extreme Left both lost somewhat, the latter especially, it was not possible to form a middle coalition which could be certain of a majority in the Reichstag. Ostensibly the Center, Social Democrats, and Democrats included more than half the House; but some members of the first-named group were too conservative to be relied upon in any liberal bloc. For a time the country was left without a ministry altogether, and finally the Right was given a chance to show what it could do. A ministry headed by a Moderate Nationalist was installed after giving assurance that it would stand by the republic.

The second election of 1924.

Assuredly, in any event, the new German constitution has not provided much ministerial stability. Between 1919 and the early part of 1925 Germany had no fewer than eleven ministries. The first three were headed by Social Democrats, the next three by members of the Center; the seventh was a ministry of experts; the eighth, ninth and tenth veered somewhat towards the Right, and the eleventh was largely made up of ministers drawn from that direction. The drift to the Right has thus been slow but steady. And this is by no means surprising because the Social Democrats and the middle groups made such poor use of their opportunities while in office.

Something more ought to be said about these groups of the Right which have come gradually into power. There are nominally three of them but the boundaries are not well defined. First there are the Nationalists, the party of the Right par excellence. They personify the old régime, and the spirit of revenge. They are the Bourbons of the new Germany who have learned nothing and forgotten nothing. Secret organizations, camouflaged preparations for another war, watchful waiting; these are the things for which they stand. Then there is a Fascist group with a strong-arm program which does not appear to be making much

Who constitute the Right?

headway. And, finally, there is the German People's party which has outwardly professed its adherence to the new order but is strongly conservative. This group contains many big business men, and is less reactionary than the Nationalist group which recruits its members chiefly from among the large landowners, the official classes, the former officers of the army and navy, and the traditionalists in general. Whatever their professions concerning monarchy and republicanism, all three groups of the Right are believers in stern, old-fashioned Prussian discipline, a bureaucratic state, a social hierarchy, and the restoration of Germany's broken military power.

The future. If the middle groups could stand together they would control, but harmony among them is nigh impossible in the nature of things,—partly owing to religious differences. The Center is ultramontane; the Democrats have a rather Semitic cast; while the United Social Democrats are non-religious in their complexion. This being the case it is difficult to predict what the future of party groupings in the Reichstag is likely to be. Possibly the Right may make further gains and clinch its position; its leaders may find some future moment opportune for a coup d'état. Already, having elected a President from their own ranks, they feel strong enough to advocate a revision of the Weimar constitution. Or it may be that with the efflux of time the republic will gain ralliés from the Nationalist ranks as was the case in France a generation ago. There is some reason for the expectation that there will be no great swing, either Right or Left, during the operation of the Dawes plan—if that plan continues in operation.

What bloc government means. Government by blocs is in any case inevitable. During the imperial period the multiple-party system was a godsend to the executive authorities. It enabled them to pursue their policy of *divide et impera*. On the other hand it resulted in no ministerial instability for the reason that there was no executive responsibility to the Reichstag. But the situation is different and much more difficult now. Under a parliamentary system it is not a matter of divide and rule, but of consolidate and rule. And German political traditions are such that it is far easier to divide than to consolidate. Heine once said that if a dozen Germans came together to talk politics they would have a dozen different opinions, and it is true that the average German is far more amenable to the influence of small-group opinion in politics than is the average Englishman or American. For this and various other reasons a consensus on any great question of public policy is hard to bring about. There are those who argue, accordingly, and with some force, that a system of government based upon the principle of ministerial responsibility should not have been established by the Weimar constitution, and that it is bound to prove unsatisfactory in operation. The plan will work out, they contend, much as it did in France during the first three decades of the Third Republic—and worse, for the federal character of the German Reich will provide complications which have never appeared in France. Perhaps this will be so. We can only wait and see.

The government of the various states.

No sketch of German government and problems, however general in its scope, can afford to omit some explanation of the way in which the states of the Reich are now being governed. There are eighteen of these states, including three free cities.[1] According to the constitution of the Reich all these states and free cities must have a republican form of government, a responsible ministry, universal suffrage, and proportional representation. Apart from these requirements each may construct its own frame of state government as it pleases. All of them have adopted new constitutions since the revolution, and no two of these constitutions are exactly alike in all respects. Yet they do not display very marked differences. In all cases the states were prevailed upon to establish collegial executives after the Swiss model rather than unitary executives such as we have in American state government. And in all cases they made provision that this plural executive, or any member of it, may be ousted from office by a majority vote of the legislature. Most of the German states, under their new constitutions, have legislatures which consist of a single chamber only.

Prussia.

Prussia continues to be by far the largest, most populous, and most important of the eighteen German states notwithstanding the fact that she suffered a serious loss of territory as the outcome of the war.[2] Her new constitution was framed and ratified by an elective convention during 1920.[1] It provides for a state legislature of two chambers, namely, a Landtag or assembly, and a Staatrat or senate. The Landtag is composed of members elected for a four-year term by universal suffrage according to the principles of proportional representation. The Staatrat represents the various provinces of Prussia, roughly according to their respective populations.[2] Its members are chosen by the provincial councils (in Berlin by the city council), but in making their selections the councils must use a system of proportional representation. The purpose of this requirement is to ensure that the entire delegation from a province shall not be chosen from any one political party. Members of the Staatrat do not hold office for any definite term; they are chosen after each provincial election whenever that may come.

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[1] That is, the cities of Hamburg, Lübeck, and Bremen which rank as states of the Reich.

[2] She gave up the province of Posen to Poland, surrendered Danzig and the so-termed Danzig "corridor," and relinquished a part of Schleswig to Denmark as the result of a plebiscite.

Relation of the two Prussian chambers.

The assent of both chambers is ordinarily required for the passage of a law. But if the Staatrat refuses its assent to a measure which has passed the Landtag, the bill goes back to the latter House, and if re-passed there by a two-thirds majority it becomes effective. If the measure fails to obtain this two-thirds majority it does not become a law unless the Landtag determines to submit the issue to a popular referendum, in which case the people have the final decision. In the case of financial appropriations, however, the Landtag cannot overcome the opposition of the Staatrat by a two-thirds vote if the action of the latter is in accord with the recommendations of the ministry, and no popular referendum can be taken on such measures.

Direct legislation in Prussia.

The Prussian constitution provides for both the initiative and the referendum. It makes the initiative applicable to constitutional amendments and to all laws except that this procedure may not be used in the case of laws relating to expenditure, taxation, or the salaries of public officials. The use of the initiative requires a petition signed by one-twentieth of the qualified voters in the case of ordinary laws and one-fifth in the case of constitutional amendments. The initiative may also be used to effect a dissolution of the Landtag, the requirement in this case being one-fifth of the entire electorate. A referendum is held upon each proposal made by use of the initiative, but may also be ordered by a resolution of the Landtag when the other chamber refuses its assent to measures passed by it. In any event a majority at the polls is sufficient to secure the adoption of a law, provided a majority of the qualified voters have expressed their opinions on the question, but in the case of constitutional amendments a majority of the qualified voters must actually be recorded in favor of the amendment or it fails.

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[1] An English translation may be found in H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1922), pp. 217-232.

[2] The city of Berlin is recognized as a province for purposes of representation in the Staatrat.

The collegial executive.

There is no Prussian president. The ministry is the "supreme executive and directing authority of the state." It is headed by a prime minister who is chosen by the Landtag. He, in turn, appoints the other ministers. All members of the ministry are collectively and individually responsible to the Landtag. It is the function of the ministry to prepare bills for the consideration of the Landtag, to issue ordinances in execution of the laws, to appoint all public officials who are directly under its jurisdiction, and to exercise the power of pardon which in most countries is exercised by the chief of state. The ministry also appoints half the Prussian delegation in the Reichsrat, the other half being named by the provincial authorities.[1] In general it is entrusted with all the powers which ordinarily rest with the chief executive of a state, and in times of emergency, if the Landtag is not sitting, it may issue ordinances having the force of law.[2] But all such ordinances must be submitted to the Landtag when it meets, and if not then approved they cease to be valid.

Ministerial responsibility with a string tied to it.

The ministry as a whole, and the individual ministers, must possess the confidence of the Landtag at all times. But they may not be ousted except by a majority of the *total* membership. It is not enough that a majority of those present shall vote a lack of confidence in the ministry. This provision does away with the danger of upsetting ministers on snap votes. Rather than resign on an adverse vote the prime minister may dissolve the Landtag if he can secure the concurrence of the presiding officers in both chambers. But he cannot order a dissolution on his own responsibility. The Prussian system of ministerial responsibility does not exactly conform, therefore, to either the Swiss or the English model. It is unlike the former in that the ministers, on an adverse vote, do not merely alter their policy and stay in office.[1] They resign, as in England, but with this difference, that they can be ousted only by an adverse majority of the total membership and the prime minister is not the sole judge as to whether a dissolution shall take place. This attempt to combine a plural executive with full ministerial responsibility is a new experiment in state administration.

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[1] See *above*, p. 628.

[2] There have been a great many of these ordinances.

German local government.

Local government in Germany, that is, the government of provinces, counties, cities and towns, is under the control of the several states. As in America the national government has no jurisdiction in this field. Most of the state constitutions provide that the provinces and the municipalities shall have home rule, in other words the right to administer independently their own local affairs, but they do not undertake to define just what matters are local in character. The Prussian provinces have their own elective councils, or diets, which choose provincial executives and hold them responsible. The old system of centralization in which the Prussian national authorities appointed the chief executives of the provinces has been entirely abolished. The cities are permitted to have either unitary or plural executives as they themselves may decide. Some have adopted one plan and some the other. In the former case there is a burgomaster elected by the city council; in the latter there is a body of magistrates similarly chosen. There are no popularly-elected mayors in German cities as in American municipalities. City councils throughout the Reich are elected by universal suffrage and proportional representation. They have virtually full control over all city affairs as in England.

The government of Berlin.

Berlin, the capital of the Reich, is now the second largest city in Europe. Its population is now nearly four millions, while that of Paris is only three. In 1920 the city and its suburbs were federated, somewhat after the London fashion. There is a central city government which consists of a chief burgomaster, a burgomaster, an administrative board, and a city council. The members of the city council, 225 in number, are elected by universal suffrage. For council elections the whole city is divided into fifteen districts and a varying number of councilmen (seven to nineteen) are elected from each district under a system of proportional representation. Most of the political parties which figure in the national campaigns are active in the city elections; they prepare their respective slates or lists of candidates in each district and try to obtain their proportionate number of seats. The Social Democrats have the largest representation in the Berlin city council, but they do not control a majority.

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[1] See *below*, p. 710.

The administrative board has thirty members. Of these eighteen are salaried members chosen for twelve-year terms while the rest are unpaid magistrates and hold office for four years only. Both classes of magistrates are chosen by the city council in a way which affords representation to the various party groups. The city council also appoints the two burgomasters. There are nineteen administrative departments (public works, public buildings, public health, finance, law, schools, etc.) with a member of the administrative board at the head of each. He is designated to this position by the chief burgomaster and is assisted in his work by a joint commission (Deputation) which is made up of magistrates, councillors, and some private citizens. The administrative board prepares most of the business for the council, but the concurrence of the latter is needed on all important matters. The council controls all expenditures.

The Berlin boroughs.

Greater Berlin, like London and New York, is divided into boroughs. There are twenty of them and they vary widely in population. Each of these boroughs (Bezirke) has a borough council which is composed of those members of the central city council who have been elected by the borough, together with a larger number of borough councillors independently elected. In this way the borough councils are tied up with the central city council more closely than is the case in London. There is a faint analogy in New York City where the presidents of the five boroughs are ex-officio members of the board of estimate and apportionment. Each Berlin borough also has a small administrative board which contains both paid and unpaid members. There are also joint commissions, but no borough burgomasters.

A division of functions between the central and the borough governments is made in Berlin,—as in London and in New York. This division is somewhat more complicated than in the latter cities but in general the central Berlin government has jurisdiction over public works, including water and sewerage, transportation, public health, and schools. The boroughs have control of the more strictly local branches of municipal administration. In addition they serve as districts for the administration of the central services. Neither the central nor the borough governments has control of police. This branch of administration (as in London, Paris, and Washington) is directly under the control of the national authorities.

The problem of governing national capitals.

It may be worth digressing to stress the fact that in Great Britain, France, Germany, and the United States the national capital has been placed under a special dispensation. In none of these countries is the capital governed like other cities. It is a place apart. In the case of the first three countries the national capital happens also to be the national metropolis, and this serves as an additional reason for the existence of a *régime exceptionnel.* But Washington is far from being the largest city in the United States and its special tutelage appears therefore to have less justification. Americans, as a people, profess themselves to be genuine believers in the principle of local self-government and municipal home rule, yet so far as their national capital is concerned there is decidedly less exemplification of it than in any other country. For Washington has no self government at all. It has neither mayor nor council. Its people do not vote. They are entirely disfranchised.

Has the spirit of German government changed?

The revolution of 1918 and its aftermath wrought great changes in the *form* of German government. Of that there can be no doubt. But whether it wrought anything like so great a change in the *spirit* of German government is by no means an easy question to answer. The spirit of the German government before the war was largely moulded by the bureaucracy,—the great mass of permanent, professional functionaries who carried on the work of administration in the Reich, in the states, and in the municipalities. In point of technical efficiency this body stood above the civil service of any other country. In thorough organization, training, and discipline the old German civil service and the old German army were on a par. This bureaucracy not only administered the public services but in reality directed the administration; it provided most of the initiative and exercised most of the discretion. Its members were able to do this because of their technical expertness and their solidarity. These officials became a governing class, if ever there was one. They made German government efficient, and incidentally they dehumanized it. They removed it far from the people. By so doing they denied the German people a rightful opportunity to learn the difficult art of popular government.

Then came the great débâcle. Almost overnight this highly-organized, bureaucratic, imperial state was transformed into a republic, and a socialist republic at that. A saddlemaker climbed into the emperor's seat, while men with proletarian names took the swivel chairs that had hitherto been warmed by princes, counts, barons and junkers. But although a ministry can be improvised, a whole civil service cannot. The new socialist ministers did not dare to oust the bureaucracy which had functioned during the imperial age, for they were aware that such action would cause the whole mechanism of administration to break down. So they merely called upon the old bureaucracy to assist in the furtherance of a new policy. Undoubtedly it was their intention to reconstruct this great body of subordinate administrative officials by gradual stages as the opportunity arose, but the opportunity has not come. No genuine reconstruction of a civil service could be accomplished with the ministers possessing so slim a hold on power as they have had in Germany during the past seven years.

It is true that the great corps of administrative officials has been somewhat liberalized during this interval, but its old organization remains unchanged. It is still permeated with the idea that its function is not merely to carry out the will of the people but to lead the nation in the way that a world-power ought to go. Nor is this idea confined to official circles. The tradition of a professionalized government is deeply rooted among large sections of the people. It is far easier to liberalize a government at the top than at the bottom, and the question whether the process has filtered down to a sufficient extent in Germany is one that nobody is yet in a position to answer. The Germans have created a new state, but is it a state with a new soul?

The current book-lists are studded with titles of volumes which profess to throw light on the politics and problems of the New Germany. Most of them are hopelessly partisan and obviously of a propagandist character. From this deluge of literature the following recent volumes in English may be selected as worthy of mention; Count Harry Kessler, *Germany and Europe* (New Haven, 1924); Herbert Kraus, *Germany in Transition* (Chicago, 1924); J. H. Morgan, *The Present State of Germany* (London, 1924), A. E. Zimmern, *Germany in Convalescence* (London, 1924), and M. P. Price, *Germany in Transition* (London, 1924). For contemporary developments the student should keep an eye on such publications as *Foreign Affairs, Current History, The Living Age,* and the sections devoted to foreign politics in the *American Political Science Review* or the *Political Science Quarterly*.

CHAPTER XXXIV

THE GOVERNMENT OF ITALY

L'Italia è fatta, ora bisogna fare gli Italiani.—*Massimo d'Azeglio.*

The kingdom of Italy.

Buttressed on the north by the Alps, and ribbed throughout its course by the Apennines, the kingdom of Italy thrusts itself into the Mediterranean. No country in Europe has had a longer and more interesting political history. It contains two regions which differ widely in their physical characteristics, namely, the northern or continental region which includes Lombardy, Piedmont, Tuscany, and Venetia, and the southern or peninsular division, which comprises not only Rome and its adjacent territories, but the old kingdom of Naples and the islands of Sardinia and Sicily. The entire kingdom comprises about 90,000 square miles, which is slightly more than the area of Kansas. But the population of Italy exceeds 38,000,000, which is more than that of all the American States west of the Mississippi.

Its early history.

The earliest history of this peninsula is known only through the classic legends. It was then inhabited by a variety of tribes. At some time prior to 700 B. C. came the founding of Rome and in due course the sway of this city was extended in all directions until it eventually spread over most of the then-known world. Thus Italy became and for several centuries remained a world empire, the center of world culture and civilization. All roads led to the Eternal City, a proud metropolis with a population of nearly a million. Then ensued a long period of decline in Roman power and its ultimate collapse in the fifth Christian century. The barbarians from the north came down into Italy, overran it, sacked its cities, wrecked its government, and turned the land into a desolation. Next followed the periods of Byzantine, Gothic, Lombard, and Carolingian domination—each with its own vicissitudes. Much could be written on the history of this lurid interval of five centuries from 500 to 1000 A. D., but this is not the time for it. It is enough to say that banditry and disorder too often got the upper hand in spite of all that either the civil or ecclesiastical authorities could do.

Italy in the later Middle Ages and early modern period.

With the beginning of the eleventh century some signs of a revival appeared. The cities, particularly in the northern part of the peninsula, began once more to grow and flourish. Princes and dukes, as well as communes and republics, were able to stabilize their power in a host of small states and to maintain a semblance of discipline although they were frequently at war with one another. By the close of the Middle Ages the time had become ripe for the welding of these jarring areas into a unified nation; but unhappily no unification was achieved. On the contrary this civil warfare paved the way for an era of foreign domination which proved to be long continued. England and France attained the goal of unity; Italy did not. She remained a geographical expression down to the end of the nineteenth century. Local jealousies, regionalism, foreign control, and a lack of national consciousness all contributed to make it so.

The genesis of unification.

The beginnings of progress towards the unification of Italy date from the years 1796-1799 when Napoleon Bonaparte invaded the land with his ever-victorious armies and brought the whole territory under his control. Thereupon, in true Napoleonic fashion, he combined many of the small states into a Cisalpine Republic, and finally united the entire peninsula under French tutelage. To all of it he extended the Code Napoléon and the French administrative system. In this way he stamped upon Italian political and legal institutions an impress which they bear to this day. But his unification of Italy proved to be of brief duration for it went to pieces when the Napoleonic empire collapsed. Nevertheless it gave the Italian people a new vision and revived among them their old consciousness of a common nationality. Thus it was the rise of a Bonaparte that first created among the Italians, as among the Germans, a determination to be united under a government of their own. And, curiously enough, it was the fall of another Bonaparte that in both cases enabled this unification to be consummated.

The work of Napoleon.

Italy after Napoleon's fall.

In 1814-1815 the Congress of Vienna met to realign the boundaries of Europe which the long wars had so rudely disturbed. One of the most difficult questions confronting the Congress was what to do with Italy,—and, as it happened, Italy had no friends at Vienna. Austria, for her own advantage and security, desired that Italy should remain disunited and weak. It was likewise Austria's ambition to dominate all the Italian states which lay within reach of her own frontier. So Italy was once more dismembered. Austria recovered Venetia and the duchy of Milan. Parma, Modena, Tuscany, Naples, and various other states were placed under foreign rulers. The Pope was confirmed in his possession of Rome and the papal states. The kingdom of Sardinia, including Piedmont and Savoy, was the only one left with an Italian dynasty. Thus Italy became once again a land of shreds and patches, as it had been before the Bonapartist invasions.

The movement for Italian unity led by Sardinia.

But the Congress of Vienna, although it rearranged boundaries, could not stifle the sentiment for unity and independence which had been aroused among the people. Bonaparte, after his exile to St. Helena, was enough of a statesman to foresee that no fiat of a world-congress would suffice to keep the various states of Italy from gravitating together. "Italy's unity of language, customs and literature," he wrote, "must sooner or later bring all her inhabitants under one government." This prediction was ultimately fulfilled, although its fulfilment was long delayed. The nationalist sentiment attained its earliest strength in the kingdom of Sardinia which, as has been said, included Piedmont and Savoy on the mainland. But no plan of union could hope to be successful unless it were based upon liberalism—and there was no political liberalism in any part of Italy during the first half of the nineteenth century. Even the kingdom of Sardinia-Piedmont and Savoy was without a constitution. It was not until 1848 that its king, Charles Albert, granted his people a charter of political liberties known as the *Statuto fondamentale*. This act of liberalism enraged the Austrians and cost Charles Albert his throne, but his son and successor refused to abrogate the constitution of 1848 although strong pressure was placed upon him to do so.[1]

The Statuto of 1848.

Cavour and the war of 1859.

With Sardinia-Piedmont under a constitutional monarch the way was cleared for the beginnings of unity. And for the next twenty years the rise of Italy to nationhood is the story of this one state's expansion over all the rest. In its earlier stages the movement had a capable and far-sighted leader, Count Cavour, who became prime minister of Sardinia-Piedmont in 1852. He was an ardent nationalist and had in mind for Italy exactly the same goal that Bismarck sought for Germany ten years later. Like Bismarck, too, he was convinced that no scheme of Italian unity would be permitted by Austria. Austria, therefore, must first be dealt with on the battlefield and ousted from all share in Italian affairs. But Austria was a great military power in these days, and it would have been suicidal for Sardinia-Piedmont to make war on the Hapsburg empire unaided and alone. So Cavour proceeded to seek allies among the other European powers. In 1855 he joined England and France in their joint war against Russia—not because Sardinia had any direct interest in the question at issue, but because Cavour desired to put France under moral obligations to his own country. By this and other well-timed diplomatic manœuvers he finally drew France into a definite agreement by which Napoleon III undertook to combine with him in driving Austria from Italian soil. Together the two allies assailed Austria in 1859, and won great victories at Magenta and Solferino; but before the Austrians had been completely dislodged Napoleon III weakened and decided to conclude a peace by which only half the bargain was fulfilled. Lombardy was taken from Austria and joined with Sardinia-Piedmont, but the Austrians were permitted to keep Venetia.[1]

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[1] Constitutions were also granted in some of the other states, notably in the kingdom of Naples; but everywhere except in Sardinia-Piedmont they were revoked during the years following 1848.

Garibaldi and the annexations.

This démarche on the part of the French was a great disappointment to Cavour and to all the partisans of Italian unification; but it did not bring the nationalist movement to an end. On the contrary it gave new virility to the cause which now aimed at nothing short of a kingdom unified from tip to toe, with Victor Emmanuel, the king of Sardinia-Piedmont-Lombardy, as monarch of all Italy. Notable progress in this direction was made when various small states ousted their foreign rulers and declared for annexation. Under the leadership of Garibaldi both Naples and Sicily revolted in 1860, expelled their foreign rulers, and voted likewise. In this way the program of unification made headway until it was virtually complete with the exception of Venetia (which Austria retained), and Rome, with the papal states, which were still under the temporal authority of the Vatican.

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[1] In return for French assistance Sardinia-Piedmont was required to hand over Nice and Savoy to France.

The completion of unity in 1866-1870.

Cavour did not live to see the completion of his work, which was delayed for another decade by reason of various obstacles. Austria could not be ousted from Venetia by the armies of Italy alone; it was necessary to wait until the Austrians were in trouble elsewhere. This opportunity arrived in 1866 and the Italians seized it without hesitation. While the Prussians were overwhelming Austria at Sadowa, the Italian armies went into Venetia and "redeemed" this portion of their homeland. They would have annexed Rome and the papal states also, had it not been for the intervention of Napoleon III who now reappeared in Italian politics, this time as the protector of the Pope's temporal rulership. From 1886 to 1870 a small French army guarded Rome against the Italians, but in the latter year it was withdrawn for service in the Franco-Prussian war and the Italians were promptly on the heels of the evacuation. The Italian capital was thereupon transferred from Florence to Rome. The temporal power of the Papacy came to an end, but in 1871 the Italian parliament passed a law which guaranteed the immunity of the Vatican from all secular interference.[1]

A striking historical analogy.

There are some interesting similarities between the unification of Italy and that of Germany. In both cases Austria was the chief barrier to the goal. In both instances the nationalist leadership was provided by one vigorous state, by Sardinia-Piedmont in one case, by Prussia in the other. There was a four-year delay in both countries by reason of French intervention, and the overthrow of Napoleon III brought the final culmination of unity in both. Bismarck lived to see the crowning of his work, but Cavour did not. The two newly-unified countries became allies and remained so for many years, but in the world war the alliance parted and they became enemies.

The present constitution of Italy.

The expansion of Sardinia-Piedmont into the kingdom of Italy did not involve the framing of a new constitution. The Statuto of 1848 was merely extended, stage by stage, to the annexed territories. Word for word it remains the constitution of Italy today. No formal amendments have ever been added to it because the Statuto establishes no procedure by which such amendments can be made. Nor has there been need for any, inasmuch as the Italians have found an easy way to secure the substance of a constitutional amendment without the form. The silence of the Statuto has been assumed to mean that its provisions may be changed at any time by the ordinary process of law. This interpretation has been accepted by the jurists of Italy and has been acted upon by her statesmen. If the Italian parliament passes a law which is in conflict with some provision of the Statuto the law prevails, and the constitution is to that extent amended. The written constitution of Italy, in other words, may be changed like the unwritten constitution of Great Britain—by precisely the same method. No Italian court has power to annul, on grounds of unconstitutionality, an act of the Italian parliament. This must not be taken to mean, however, that in Italy there is no difference between the Statuto and any ordinary law of the land. The Italians have a good deal of reverence for the constitution of 1848. Both parliament and the people recognize that its provisions, while not immutable, ought not to be overridden or evaded unless there appears to be some very cogent reason for so doing. Hence the Italian parliament does not ordinarily venture to pass any law which is clearly in conflict with the constitution unless the issue has been well threshed out in an election campaign and a mandate from the people obtained.[1]

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[1] The Law of the Papal Guarantees. See *below*, p. 685.

How amended.

General character of the Statuto.

Italy has the shortest written constitution of all the great European countries. It is for the most part a statement of general principles. Although it contains eighty-four articles, they are all very brief (with one exception). The whole document could be printed in ten pages of this book; the constitution of the United States would require fifteen. Being brief and general in its provisions, the constitution of 1848 leaves a large amount of governmental machinery to be built up by law. Usage has also been at work in moulding the methods used by the legislators and administrators at Rome. It has altered some provisions and expanded others. Hence, while the Statuto continues to be the foundation of Italian government, it is merely the foundation and not much more. The superstructure is a composite of laws, decrees, and usage.

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[1] There is no assurance, of course, that this tradition will be respected by the Fascist leaders who now (1925) control the Italian parliament.

The monarchy.

Italy is a limited monarchy, with succession to the throne vested in the House of Savoy.[1] The present king, Victor Emmanuel II, is a great-grandson of Charles Albert who granted the constitution. The powers of the monarch are almost exactly as in England, which is another way of saying that they are wholly exercised under the guidance of responsible ministers. No other country of continental Europe has so closely copied the English method of carrying on the executive work of government. The crown in Italy, as in England, is the symbol which the ministers use in the exercise of authority which belongs to themselves. The constitution provides that all laws and decrees must be countersigned by a minister, and it also provides that "the ministers are responsible," although it does not state that this responsibility shall be to the popular branch of the Italian parliament. But by usage they hold themselves accountable ministers to the Chamber of Deputies alone, and they remain in office so long as they command the support of a majority in that body. So the arrangement closely parallels that which has so long existed in England, and the similarity became even more striking when the electoral reforms of 1920-1923 went into force. Prior to 1923 the Chamber of Deputies was broken up into many small party factions and this made it impossible for any ministry to maintain itself in office except by forming a bloc or coalition. These blocs were of necessity rather unstable, and their instability was reflected in the tenure of the Italian ministries. For fifty years after the unification of Italy these ministries went in and out of office at brief intervals. Rarely could any cabinet manage to retain its hold for more than a year or two. But in 1923 this ministerial volatility was brought to an end (for a time at least) by the adoption of a new electoral system which provided that whichever political party happened to make the best showing at the elections should get undisputed control of the Chamber of Deputies.[2] It is thus enabled to install and keep in office a ministry drawn wholly from its own ranks.

The control of the crown by the ministers.

How an Italian ministry is formed.

The chief adviser of the Italian crown is a prime minister, chosen as in England. The king sends for the leader of the majority party in the Chamber of Deputies and requests him to form a ministry. Usage requires in Italy, as in England, that all members of the ministry shall have seats in parliament. But an Italian minister or undersecretary who is a member of one chamber has the privilege of appearing and being heard in the other, which is not the English practice. There are fourteen ministers in the Italian cabinet, but the number is not fixed by law and may be changed by the prime minister at any time. Every minister is assisted by an undersecretary who is also named by the premier. The various departments are organized as in France, but since 1923 the position of the Italian prime minister has become much more dominating than is that of his counterpart in France. He does not have to bargain with caucuses or exhaust his patience in wheedling cantankerous colleagues into line. He is the master of his ministry.

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[1] The succession is regulated according to the mediæval rule commonly known as the Salic Law, by which only male heirs to the throne are recognized.

[2] See *below*, pp. 672-673.

Features drawn from England and from France.

The present status of the Italian ministry may be made clear perhaps, by saying that it is like the English cabinet in its solidarity and in the nature of its responsibility to parliament, but like the French ministry in its organization, functions, and methods of doing business. In Italy also, it is the practice to enact the laws in broad terms, leaving the detailed provisions to be filled by ordinances and decrees. So the Italian ministers issue large numbers of decrees which supplement the laws; they sometimes go farther and promulgate ordinances on matters which have not been covered by law. The Statuto expressly provides that ministerial decrees are not to suspend the execution of the laws or grant exemptions from them, but this limitation has frequently been honored in the breach. Indeed, the Italian parliament has occasionally withheld its legislative hand altogether and given the ministry carte blanche to deal with some important question through the issue of decrees. The idea that a government should be "of laws, not of men" has found no lodgment in Latin countries. These countries, in general, prefer decrees to statutes because they are less rigid and can be used to meet a greater diversity of conditions. The ordinance power of the ministers is even wider in Italy than in France, and it is often delegated to subordinate officials. The making of decrees, in fact, has become one of Italy's great industries. Regulations and rescripts come from the offices of ministers, under-secretaries, prefects, sub-prefects, and syndics in bewildering profusion. The billboards of every little Italian town are

The ordinance power.

covered with these *decreti è regolamenti* which few people read and still fewer understand.

The Italian Parliament: The Senate

The Italian Parliament consists of two branches, a Senate and a Chamber of Deputies. The Senate is unlike the upper chamber of any other country. It is a combination of the House of Lords in England and the upper house of the Canadian parliament. A few of its members are hereditary, but the majority are appointed for life. The princes of the Italian royal house are senators by hereditary right. The appointive senators are named by the king on the advice of the prime minister but they must be chosen from certain categories of persons set forth in the constitution and the appointees must be at least forty years of age. There are twenty-one categories named in the Statuto, but they include only four general classes of citizens, namely, (a) bishops and other high dignitaries of the Church, (b) persons who hold or have held various high offices in the government or in the military or naval service, (c) citizens who have attained high distinction in science and literature as shown by their membership in the various academies, or who "by their service or eminent merit have done honor to their country" and (d) persons who pay a certain minimum in annual taxes. The Senate has the right to refuse a seat to any appointee if it finds that he does not come within some one of these categories, and it has frequently exercised this right; but if a new senator fulfils the technical requirements the Senate cannot reject him on any other ground.

Its composition.

The size of the Senate is not fixed by the constitution, by law, or by custom. Today it has about four hundred members. No bishops or other church dignitaries have been named since 1870 because of the strained relations between the Vatican and the Italian government. Most of the senators have been chosen from persons who have had long service in the Chamber of Deputies or who have held high positions in the army, the navy or the administrative service. A goodly representation has also been given to the universities and the academies, especially to the Royal Academy of Sciences; but only a very few senators have been chosen from among Italians who "by their service or eminent merit have done honor to their country." The crown has nominated a good many from this category but in most cases the Senate has refused its confirmation.

Its powers.

According to the letter of the Italian constitution the Senate has equal legislative power with the Chamber of Deputies except for the customary provision that money bills must originate in the latter. But in actuality its powers are far from being co-equal. Among measures of all kinds the vast majority originate in the Chamber. The Senate rarely rejects anything that the Chamber has passed. It sometimes sends measures back with amendments, but if the Chamber does not accept them the Senate must yield. This necessity arises from the fact that if it does not yield the ministry can request the king to appoint a sufficient number of new senators to overcome the opposition. This it did on two notable occasions. In 1890 seventy-five senators were appointed at one stroke; and forty-two others were added in 1892. These drastic additions to its membership taught the Senate a lesson and it does not now refuse its assent to any measure which the Chamber insists on passing. Its share in lawmaking has thus been reduced to even less than that possessed by the British House of Lords.

Its lack of control over the ministry.

The Italian Senate has no control over the ministry. The constitution provides that the ministers are responsible, but does not say to whom. Usage has directed this responsibility to the Chamber of Deputies alone. The ministers do not resign on an adverse vote of the Senate; they merely persuade the Senate to change its mind. This is not usually difficult because in Italy, as in France, the ministers have a large amount of patronage at their disposal. And most of the senators, being experienced politicians, are quite amenable to the various forms of political largesse which ministers know how to distribute. They are aware, moreover, that if the worst comes to the worst, the ministers can overcome senatorial opposition by swamping the upper house as explained in the preceding paragraph. So the actual responsibility of the ministers is to the Chamber alone, and since the lower House controls the ministers it has virtually complete power over the course of administrative policy. But since the electoral law of 1923 went into effect it is equally accurate to say that the ministry controls the Chamber, for the ministers are the recognized leaders of a large majority there and insist that their leadership shall be followed. As the Italian parliamentary system is constituted at this moment (1925) nothing of any importance has any chance of adoption by the

Chamber unless the prime minister stands sponsor for it or is willing to have it adopted.

A lesson in comparative government.

The history of the Italian Senate should carry an instructive lesson to students of comparative government. Its personnel is of a high order. No upper chamber in any country includes in its membership a larger amount of brains, education, scientific attainment, and political experience. It is, in its way, a hall of fame incarnate. Yet its influence upon the course of public policy has been next to negligible. The people pay very little attention to what it does or fails to do. When the Italian Senate undertakes to justify its existence it usually gets into trouble. Its great array of talent has not availed against the democratic dogma. The fact is that the personnel of a legislative body, no matter how excellent it may be, affords no clue to its powers or its political influence. In all countries the people insist that the substance of power shall be exercised by those whom they elect—even though these representatives be far inferior in personal capacity to legislators whom somebody else appoints. Life tenure in a legislative body is a handicap. It leads straight to impotence. If an upper chamber is to exert a real influence in lawmaking its members must be directly or indirectly elected by the people. The history of popular government proves this beyond peradventure.

Proposals to reform the Italian Senate.

In Italy, as in England, there has been intermittent talk of reforming the upper chamber. Various plans have been put forward, the best-known among which is the Arcoleo plan of fifteen years ago. It was prepared by an official commission after a thorough study of upper chambers in all other countries. This plan contemplated the naming of senators by electoral colleges as in France, but with the electors somewhat differently chosen. These electors would represent vocational and professional interests (such as chambers of commerce, agricultural associations, labor unions, and learned societies) rather than geographical areas. The framers of the project argued that all the geographical interests of Italy were adequately represented in the lower House and that the upper chamber ought to be constituted on a different basis. But the Arcoleo plan did not command much favor among the deputies and it was soon dropped. Unquestionably the adoption of any such plan would increase the powers and prestige of the Senate at the expense of the lower House, which is precisely what the deputies do not desire. During the past few years little has been heard of the matter.

The Chamber of Deputies.

The Chamber of Deputies is the Italian House of Commons. It contains 535 members. The suffrage has been widened to include all male Italian citizens twenty-one years of age or over. No literacy test is imposed. The elections are by secret ballot. Originally the members were chosen from individual districts, one deputy from each; but it was felt that this encouraged a spirit of localism and in 1882 a plan of election by *scrutinio di lista* was adopted. Under this arrangement the country was divided into larger districts, each of which elected from two to five deputies. But the change proved disappointing in its results, and nine years later the old plan of single-member districts was restored, but only to be once again replaced, in 1919, by a scheme of enlarged districts with proportional representation. This arrangement continued until 1923 when the Mussolini administration took the matter in hand and replaced it by a new and wholly different plan of election.

How its members are chosen:

1. The older methods.

2. The Fascist plan.

This new plan, which was embodied in the electoral law of 1923, established what may be called a system of "unproportional representation." It is a simple arrangement, and can be very easily understood. When the time for a general election is at hand, each political party nominates its list of candidates for the entire country. Then the people, at the polls, vote for one of these lists, not for individual candidates. The list which receives the largest number of votes, even though it be much less than a majority of the whole, takes two-thirds of all the seats.[1] The Fascist list, at the elections of 1924, polled about

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[1] For the making of the lists the country is divided into fifteen regions. In each of these regions the leaders of the party prepare a regional list. These are then combined into a national list, but with such substitutions as the national party leaders decide to make. A party may prepare lists in all fifteen regions, or only in some of them. At the elections of 1924 there were as many as ten lists prepared in some regions and only two or three in others. Only three parties, the Fascists, Popolari, and Socialists presented lists in all fifteen regions. There were 1360 candidates in all, of whom 356 were on the Fascist list (not all of whom, however, were Fascisti), 140 on the Popolari list, 139 on the Maximalist list and 119 on the Unitary Socialist list. The ballots bore the symbols and names of the parties only—not the names of the candidates. The voter at an Italian election does not mark a cross. He draws a line through the symbol of the party that he prefers. The Fascist symbol is the Roman fasces and axe; that of the Popolari is a cross on a shield.

40 per cent of the total vote and was given 356 seats. The other parties took the remainder in proportion to the relative number of votes cast for their respective slates.

Its theory.

Now there is something to be said for the idea which lies at the basis of this unproportional system. It is this: that party government cannot be successful unless there is party responsibility. And there can be no effective responsibility unless some one party is given the power to carry its pledges into operation. Party responsibility goes hand in hand with power. Government by blocs and coalitions is bound to diffuse responsibility by enabling it to be shuffled from one group to another. The design of Mussolini's electoral law was to ensure that one political party would have complete control, so complete that there could be no ministerial instability, no non-fulfilment of party pledges, and no evasion of party responsibility for what the government might do or fail to do. All this sounds like good political theory.

How it worked.

But the real value of a political theory is determined by the way in which it is applied. Laws do not function in a vacuum. They do not always operate according to their tenor. This particular law, as it happened, did just what its framers had in mind; but the manner of putting it into operation was highly unpopular with large elements among the Italian people. To them it looked like a country-wide gerrymander, a crude device for keeping the Fascists in control of the Chamber. They saw no good reason why 40 per cent of the people should elect two-thirds of all the deputies. Nothing of that sort ever sounds like true democracy to the common man. At any rate the popular opposition to the plan gathered force and early in 1925 Mussolini announced that he would recommend the appointment of a special commission to prepare a revision, not only of the electoral law but of the national constitution itself. This commission, consisting of eighteen members, was duly appointed and in a short time had a tentative scheme ready. Briefly, it suggested that the Chamber of Deputies should be increased in size to 600 members, of whom 300 should be elected on a geographical and 300 on a vocational basis. In order to secure a reasonable degree of ministerial responsibility it was further suggested that the ministry should no longer be held responsible to the Chamber alone but that, if defeated in this body, should have the opportunity of appealing to a joint sitting of the Chamber and the Senate. No action on these suggestions has as yet been taken by the Italian parliament. The idea of combining geographical with vocational representation has something to be said for it; but the plan of ultimate ministerial responsibility to both chambers in joint session would probably turn out to be unworkable.

Normal legislative terms and dissolutions.

The Italian Chamber of Deputies is elected for a five-year term, but it may be dissolved by the king at any time on the advice of the prime minister—exactly as in England. Dissolutions have been relatively frequent, and the average duration of an Italian parliament, prior to the world war, was a little more than three years. It was taken for granted that the old tradition of ministerial instability would be brought to an end by the unproportional scheme of electing the deputies inasmuch as the ministry would have a large and solid majority in the Chamber. That being the case it could remain safely in power for the entire five-year term and would not be under any temptation to advise a dissolution. But this assumption did not prove to be justified. The Fascist ministry which took office in 1924 with a big majority of the Chamber behind it, was unable to hold its strength in hand. Many deputies who had been elected on the Fascist ticket withdrew their support. In less than a year much of the majority had melted away and the ministry was faced by the almost equally unpalatable alternatives of resignation, dissolution, or a virtual dictatorship.[1] There is no way in which ministerial stability can be ensured by law. It is something that has its roots far down in the national psychology.

Procedure in the Chamber.

The Chamber of Deputies meets every year and frequently continues in session for an entire twelvemonth. It elects its own presiding officer, whose position conforms to the speakership in England, with the same tradition of neutrality. The Italian Chamber originally modelled its procedure upon that of the House of Commons, but it has gradually departed from the English pattern and incorporated various procedural features drawn from the Chamber of Deputies in France. It was impossible to do otherwise because the English parliamentary system rests on the assumption that there are two major political parties in the House, one controlling the government and the other forming a solid opposition. The Italian Chamber, having several parties in its membership, has had to adapt its rules to the exigencies of this situation and today its procedure is not widely different from that followed in the Palais Bourbon.

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[1] See also *below*, pp. 690-692.

The committee system.

In two respects, more particularly, the Italians have gravitated toward the French rather than the English system of parliamentary procedure,—namely, as regards the selection of committees and the use of the interpellation. Most of the committees in the Italian Chamber are selected according to a method which was long used in the French parliament but has now been abandoned. The entire membership is divided by lot into nine sections, a redivision being made every couple of months. Whenever a committee is needed, each of these sections contributes one member, thus creating a committee of nine. A few important committees, notably the committee on the budget, are not chosen in this way but are named by the whole chamber, usually on the initiative of the ministers. The committee on rules is appointed by the presiding officer, as was formerly the practice in the American House of Representatives. The work of the committees in the Italian Chamber, with the exception of the budget committee, is rather less important than that of parliamentary committees in other continental countries. This has been especially the case during the last few years, for the Fascist ministry has functioned as the great standing committee of parliament.

Interpellations.

The interpellation procedure in Italy has also been borrowed from France. The rules and usages relating to it are the same in both countries except in one particular. In France the debate and vote take place immediately after the minister has given his reply to the interpellation; in Italy the practice is to postpone both the debate and the vote for a week or more. This gives the members time to digest the minister's reply, and to note what impression it makes on public opinion, before they are called upon to discuss it. Therein the Italian procedure is superior to the French, in that it does not so easily lend itself to rash action, but it is inferior to the plan used in the German Reichstag where no vote follows the interpellation either immediately or at a later date. The German arrangement permits full discussion, if a discussion is desired by a sufficient number of members, but it does not lend countenance to the habit of ousting ministers on relatively trivial issues. Since 1923 the interpellation has been a feature of vastly diminished importance in the Italian chamber. Mussolini has had too strong and too subservient a following to be much concerned over interpellations, however hostile.

Apart from the committee system and the interpellations, the process of lawmaking in Italy is much like that followed by other legislative bodies. All money bills must be introduced in the Chamber of Deputies. Government measures are introduced by the ministers and defended upon the floor by them. Other public bills can be brought in by any member and this privilege has been freely used. Every bill goes through three readings in both chambers and when finally enacted receives the approval of the king. This approval, as in England, is always given without hesitation or murmur. The measure is then promulgated by royal decree.

The Italian legal system:

The codes.

Italy, like France, is a land of law codes. Before the unification of the kingdom, there were different bodies of law in each principality or state, but the legal system is now uniform throughout the whole country. This has been accomplished by the compilation and enactment of several great codes which embody the civil law and civil procedure, the criminal law and criminal procedure, the law of commerce, and so on. These codes follow, in the main, the principles of the old Roman law and hence bear a considerable resemblance to the Napoleonic codes which form the groundwork of jurisprudence in France.

The distinction between ordinary and administrative law.

As in France, again, there is a distinction between ordinary and administrative law, but it is by no means so sharp a distinction in Italy. In France, it will be remembered, a public officer is not subject to the ordinary law, or amenable to the jurisdiction of the ordinary courts, for any act performed in the course of his official duty. But in Italy a public officer may be brought before the ordinary courts if his official action is asserted to involve the infringement of a private *right*, but not if it is alleged to be an interference with a private *interest*. The distinction may seem to be a subtle one, but it is reasonably clear in most cases. Americans ought not to be perplexed by it, for the distinction between the rights and the interests of a citizen is plain enough in their own country. A right is something guaranteed to the citizen by the constitution or the laws—the right to life, liberty and property, for example, which may not be impaired without due process. An interest or a privilege, on the other hand, is something that the laws permit the citizen to have but which they do not guarantee—the privilege of serving on a jury, for example, or an interest in the holding of a public office. In the United States the government cannot take a man's property away from him without compensation, but it can abolish (without compensation) any public office that he holds and thus deprive him of its emoluments. In Italy any official act involving the infringement of a citizen's "interest" goes before the administrative courts. Any dispute as to whether an official act relates to a right or an interest is settled in Italy by the court of cassation and not by a special court of conflicts as in France.[1]

The ordinary courts.

The lower civil courts in Italy are organized on a district basis. The whole kingdom is divided into primary judicial districts, several hundred of them. Every locality has its own primary court. These primary districts are grouped into larger judicial areas, each of which has a superior court with somewhat more extensive jurisdiction. Above these, again, are courts of appeal. Finally, there is a court of cassation at Rome. Until 1923 there were five courts of cassation sitting in different parts of the country, each supreme in its own area. This was a hindrance to the uniform interpretation of the law, for each court held itself free to make its own construction of any clause in the codes. But local sentiment delayed the unification of the supreme judiciary for a long time. Today, under the new law, the court of cassation at Rome is not only the tribunal of last resort in all civil and criminal cases, but also serves as a court for settling disputes as to jurisdiction.

A digression on public opinion in its attitude towards centralization.

The discriminating student of comparative government has probably observed that public opinion, in every country, has a strong repugnance to centralization in some fields, but not in others. In America we tolerate centralization cheerfully (and indeed are proud of it) in our judicial system. We see no reason why a single body of nine learned justices, sitting at Washington, should not have the last word in the settlement of controversies that have arisen in Oregon or New Mexico. But American public sentiment rebels against the suggestion that any group of men at the national capital should have ultimate power of decision with respect to the schools of the country, or the conditions of labor in factories, or the government of cities. In America we will not listen to any project for a great centralized national bank, like the Bank of England or the Bank of France. In England, on the other hand, there is no objection to a centralization of banking control in London, but central control of local government has always been repugnant to Englishmen. Italy believes thoroughly in central control of local government but for a long time recoiled from the American idea of a supreme court with nation-wide jurisdiction. Italians also have an aversion to the Anglo-American legal doctrine of *stare decisis,* in other words to the rule that courts ought to follow their own prior decisions and thus build up a body of precedents or judge-made law. In the Italian court of cassation every decision stands on its own feet; the judges are not bound by their own previous rulings, and there are frequent reversals. This policy has some merits but it gives an air of uncertainty to the administration of the law. It is strange that Italy should harbor this aversion to judge-made law, for it was the prætors of ancient Rome who originated the idea.

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[1] See *above*, p. 546.

Organization and procedure of the ordinary courts.

The judges in all the ordinary courts of Italy are appointed by the crown on the recommendation of the minister of justice, but they must be persons who possess certain definite legal qualifications. They are customarily promoted from the lower courts to the higher. Save in the primary courts the judges are not removable after three years' service except on serious charges which must be proved to the satisfaction of the court of cassation at Rome. But they can sometimes be shifted from one judicial district to another by the ministry, and this power has been freely used to put executive pressure upon the judges. The procedure in hearing controversies is much like that followed in the ordinary courts of the French Republic, but on the whole the courts do not seem to function so smoothly nor has the administration of justice been so relatively free from the interference of politicians. Juries are used in the trial of important criminal cases, but the workings of the Italian jury system have left much to be desired. The jury is an Anglo-Norman institution that does not seem to thrive in any but its native soil.

The administrative courts in Italy are organized almost ex-

The administrative courts.

actly like those of the French Republic. Each Italian province has an administrative tribunal made up of certain provincial officers designated by the prefect. From the decision of a provincial court an appeal may be carried to a special section of a council of state which sits at Rome and the members of which are appointed by the king on the advice of his ministers. This special section is amply protected against interference on the part of the government and it has stood valiantly for the interests of the Italian citizen against the arbitrary actions of public officials. The council of state in Italy has other functions similar to those of its counterpart in France.

The system of local government.

France has been the pattern for Italy in still another field—in local government. The similarity here is very marked, there being no substantial differences except in nomenclature. Italy, like France, has highly centralized her system of local government under the supervision of a minister of the interior. The country is divided into seventy-five provinces which, like the French departments, vary greatly in size and population. At the head of each province is a prefect, appointed by the king on the advice of the minister. The prefects are quasi-permanent officers, promoted from the lower ranks of the administrative service, and shifted from one province to another as occasion arises. They are not immune from transfer or even dismissal on purely partisan grounds. The Italian prefect is not only the executive head of the province but the local agent of the national government as well. His powers and duties are almost word for word like those of his French prototype. Like the latter, too, he is an active figure in politics and one of his moral obligations is to help carry the province for his own political party at the elections. He electioneers as openly as he dares. In the performance of his official duties the prefect is assisted by an administrative staff whose members make up a sort of provincial cabinet.

The provincial governments.

In each province there is a provincial council or *giunta*, elected on a basis of universal suffrage. Its functions are essentially the same as those of the general councils in the French departments. The Italian provincial council, like a legislature, sits for several months in each year, and when the session comes to an end it appoints a commission of its own members to serve during the recess. The prefect and his assistants are not amenable to control by the provincial council, which cannot eject them from office; they are responsible to their superiors in the national government at Rome. But the council controls the funds which the prefect must procure in order to carry on the provincial government, hence he must somehow manage to work in general harmony with it. For this reason the government of an Italian province is largely a system of government by compromise.

The smaller areas of local government.

Within each province there are arrondissements and cantons as in France. As an administrative unit the arrondissement is even less important than in that country. The Italian canton is merely a judicial district. Finally, there are the communes, about 8500 of them, ranging from large cities down to small villages. There is no legal distinction in Italy between a city, a town, and village. All are communes; all are governed under the same municipal code and in the same way. The only important difference is that larger communes have larger councils. These communal councils are elective and they are the dominating factor in the Italian municipal system. They fix the tax rate, vote the money, and have full supervision over all the chief activities of the town or city. The council elects a syndic or mayor from among its own members and also names a commission to assist him. The syndic is chosen by the council for a three-year term, and although he cannot be deposed by it within that period, he usually works in full harmony with it. He is, in fact, the leader of the council and by becoming *sindaco* does not cease to be a member of it. On the other hand he is subject to instructions from the prefect, and to serve both masters often gives him a hard time of it. Worst of all, the entire municipal system of Italy has become so thoroughly honeycombed with partisan politics that its efficiency has been much impaired. Little scope is given for the exercise of local initiative or for the trying of new methods in municipal administration. Everything is prescribed and made uniform by decrees from Rome—by decrees and regulations which have been inspired for the most part by professional politicians. The Italians profess a belief in local self-government, but they have never carried their profession into practice.

Some merits of the system.

A centralized system of local government has serious defects, but it also has advantages. It affords a guarantee against local disorders. The national government has its agents in every nook and corner of the kingdom—its prefects, sub-prefects, syndics, and the rest,—who can sense trouble the moment is appears and act promptly. This is an important advantage in any country where local outbreaks are likely to occur and spread. Centralization also ensures the maintenance of at least a moderate standard of efficiency and thrift in local government. Unsupervised self-government in cities and towns, as Americans have had occasion to learn, often means local misgovernment. When the higher authorities set the standards these may not be high, but each community must keep up to them.

Bolton King's *History of Italian Unity* (2 vols., London, 1899) is perhaps the most convenient source of information for the student who desires an outline of modern Italian history written in English. It should be supplemented by Bolton King and T. Okey, *Italy Today* (London, 1911). Attention should also be called to William R. Thayer's admirable biography of Count Cavour (2 vols., Boston, 1911), to W. J. Stillman's life of Francesco Crispi (London, 1899), and to Justin McCarthy's *Pope Leo XIII* (London, 1896). J. A. R. Marriott's little volume on *The Makers of Modern Italy: Mazzini, Cavour, and Garibaldi* (London, 1889) is very readable.

An English translation of the Statuto may be found in H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1922), pp. 551-560, and in Herbert F. Wright's volume on *The Constitutions of the States at War,* issued by the Government Printing Office in Washington (1919).

No good book on the government of Italy has yet appeared in English although there is much need for such a volume. The standard work in Italian is by Racioppi and Brunelli, *Commento allo statuto del regno* (Turin, 1909). On local government the best general book is Bonaudi's *Comune e provincia* (Turin, 1922).

Note on the *Suspension of Local Self-Government.*

In 1926, by two important decrees, the Mussolini government suspended the existing system of municipal government. Syndics, *giunte,* and communal councils were replaced by appointive officials known as *podestàs.* See the author's *Government of European Cities* (new edition, New York, 1927), pp. 392-393.

CHAPTER XXXV

ITALIAN POLITICS AND POLITICAL PROBLEMS

> It is impossible to understand the age-long need which has always determined the general lines of Italian policy without taking into account the two principal factors which still govern Italy's present and future—the growth of her population and her geographical position in the Mediterranean.—*Francesco Coppola.*

The intricacies of Italian party politics.

No one who is not an Italian can hope to understand the intricacies of party politics in that historic land, at least not without prolonged study. It would take a whole volume to recount the devious twists and turns of the party groups in the *Camera dei Deputati* during the past fifty years. But there are a few consistent threads which run unbroken through the political history of this half century and they are helpful guides in what would otherwise be a mystic maze.

A general outline, 1848-1896.

Modern Italian politics began with the Statuto, although that document contains no hint that political parties would have any share in the government. Cavour, who became prime minister in 1852, was not a strong party man. He was a conservative with liberal inclinations. During the period of his premiership (1852-1861) Cavour built up a great body of political followers. They were not held together by party ties but by personal devotion to him and by their zeal for the unification of Italy. The great statesman's death in June, 1861, shattered one of those bonds, and with the final occupation of Rome in 1870 the other went also. Thereupon the country divided into two camps commonly known as the Right (Conservatives) and the Left (Liberals). The former drew their chief strength from the north, the latter from the south. The Right managed to secure the lion's share of the credit which went with the achievement of Italian unity and for some years after 1870 was able to dominate the Chamber. But its rule was too reactionary to suit the masses of the people and in 1876 it was replaced by the Left which was able to hold the reins of power, without interruption, for twenty years.

During this period there were several prime ministers, for both the Right and the Left proceeded to become split into smaller groups, and although the groups forming the Left were consistently the stronger they could not stay united behind a single ministry for any considerable length of time. The most notable of Italy's prime ministers during the earlier portion of this period was Depretis, a shrewd political manipulator who always managed to get himself counted among the winners after each ministerial crisis. He was not a great statesman in any sense of the term. During the later years of the nineteenth century, especially during the era 1891-1896, the outstanding figure in Italian politics was Francesco Crispi, a leader of great vigor and capacity, who unhappily ran into difficulties which were not altogether of his own making. An Italian military expedition against Abyssinia met with a serious defeat and Crispi became the scapegoat. With his departure from office the parties of the Left surrendered, for the moment, their long lease of power.

From 1896 to the world war.

The Right came back to office in 1896, after its long rest in the shades of opposition, but it did not remain in office very long. It could not hold a majority of the chamber together. There seemed to be no place in Italian politics for an avowedly conservative *blocchi*—as a coalition is called in the land of the Cæsars. It would serve no purpose to trace, in these pages, the kaleidoscopic shiftings of the party groups during the next fifteen years. Ministries were formed, defeated, re-formed, and defeated again. Only one statesman managed to keep himself consistently to the forefront during these troublesome times. This was Giovanni Giolitti, foremost among the leaders of the Left, an opportunist if ever there was one, and a politician of marvellous dexterity in the making of coalitions. Although it is often said that he never deigned to face any great national problem in a statesmanlike way, nevertheless most of the social legislation that Italy now possesses was enacted under his leadership or with his support. At various times Giolitti had to meet not only the opposition of the conservative groups but that of the socialists as well, for he declined to go so far as the latter desired. That he was able to do so much is a tribute to his skill in the handling of politicians. He professed democratic sentiments, but did not have any fixed political principles and was ready to favor any party provided that by so doing he could carry on a little longer. Yet he was marvelously successful in politics. Giolitti held the post of prime minister during a considerable part of the period 1900-1915, and when not in power he was usually close to the edge of it.

Three great political issues: 1. The Roman question.

Three outstanding issues emerge from the maelstrom of Italian politics during the half century 1870-1920, and they must be appreciated by anyone who desires to understand the political situation in Italy at the present day. The first concerns the position of the Church. It is the most perplexing and the most persistent of all the problems that the Italian government has had to face. Italy is a Catholic country, overwhelmingly so; hence it may seem surprising that the privileges of the Holy See should be the theme of so much bitter contention. The explanation is not to be found in the politics of today but in the vicissitudes of Italian history. The troublesome nature of a problem is often related to its origins, and here we have a good illustration.

Its history

The origins of the Roman question go back a long way, back to the fourth century when the capital of the Roman empire was moved to Constantinople and the Papacy secured the opportunities which ultimately placed it in possession of the Eternal City. But it is not necessary to follow the history of the Vatican through the Middle Ages and down into the modern centuries. It is enough to begin with the Congress of Vienna (1814-1815) which confirmed the Pope in possession of Rome and the Papal States as a civil sovereign. During the years down to 1870, therefore, the Pope occupied a dual position. He was the head of the Roman Catholic hierarchy in all countries, and he was also the secular sovereign of Rome and of the States of the Church. These states had no constitution. There were no limitations on the powers of the Pope as a secular ruler. He had ministers, but no parliament. He appointed governors and civil magistrates; he promulgated the laws, and by his authority the taxes were levied. This secular rulership of the Vatican had some meritorious features, but the practice of combining temporal with spiritual rulership has never proved very satisfactory anywhere.

The end of the temporal power.

At any rate the people of Rome and the Papal States desired a representative system of government, and in 1848 they clamored for a constitution quite as loudly as did the people in other parts of the country. Pope Pius IX granted a constitution, but this action did not allay the discontent and during the troubles a short-lived Roman republic was established. The French government intervened as protector of the Papacy, however, and restored the temporal power of the Vatican. The constitution was abolished. Things were put back on their old footing. But the success of the nationalist movement in the other Italian states kept the whole Roman question alive and forced it to the front wherever the future of Italy was under discussion. The whole problem was simply this: Italy was determined to be united, with Rome as her capital. That necessarily involved the termination of the Pope's temporal power. One or the other had to give way. Until 1870 France stood by the Papacy and the Italian government had to wait in patience. But when Napoleon III threw his country into the ill-starred war with Prussia the Italians lost no time in turning the international situation to their own advantage. In 1870 their troops entered Rome on the heels of the French withdrawal and thus, after twenty-five years, realized Cavour's dream of a reunited Italy. The temporal power of the Holy See was declared to be at an end and the Papal States were incorporated into the Italian kingdom.

The Law of the Papal Guarantees, 1871

Now it was not the intention of the Italian government to embarrass the Pope in the exercise of his spiritual rulership; on the contrary it desired to accord the Vatican every privilege and immunity consistent with the exercise of the new national sovereignty. In keeping with this attitude the Italian parliament, in 1871, passed a comprehensive statute known as the Law of the Papal Guarantees. The general purpose of this statute was to ensure the Pope full freedom of action as supreme pontiff. It therefore accorded him most of the privileges of a civil sovereign. All offences against him were made equal in seriousness to offences against the king. He was confirmed in his possession of the Vatican and Lateran palaces, with all their grounds and buildings, free from taxes perpetually. The law provided that ambassadors and other diplomatic officials accredited to the Vatican should have all the legal immunities given to other ambassadors, including freedom from arrest by the Italian authorities. All Italian officials were forbidden by the law to set foot within the precincts of the Vatican without the Pope's permission, or to censor communications between the Papacy and the outside world. Finally, the statute provided that an annuity of three and a quarter million lire (nearly $650,000) per annum should be paid each year to the Holy See from the royal treasury as compensation for the loss of papal revenues due to the taking of Rome.

The Law of the Papal Guarantees also made various concessions to the Catholic Church in Italy. It abolished many of the restrictions upon the clergy and provided that the civil authorities should give up their time-honored right to make ecclesiastical appointments. The bishops are now designated by the Pope, but they are not entitled to certain pecuniary emoluments or "temporalities" until the episcopal appointments have been confirmed by the Italian government. The Italian crown also retains the *jus patronatus* in the case of a number of ecclesiastical benefices. A highly important concession in the law of 1871 was embodied in the provision that the bishops appointed to certain titular dioceses (the suburbicarian sees which are usually held by members of the College of Cardinals) need not take the oath of allegiance to the king of Italy, thus making it possible for these titular posts to be given to ecclesiastical dignitaries who are not Italian citizens. The jurisdiction of the Church courts in ecclesiastical matters was also formally confirmed, and the olive branch was held out in various other ways.

Attitude of the Vatican towards the law.

But these guarantees, although they went a long way, did not satisfy the Papal authorities who felt that Italy had done a wrong which could not be set right by diplomatic courtesies, tax exemptions, or money payments. Hence, while the law of 1871 remains on the statute book, each successive Pope has declined to recognize its provisions in any way. Without exception, all the Popes since 1871 have refused to set foot outside the Vatican grounds, or to take a single lira of the government's annuity. So bitter was the resentment of Pope Leo XIII that he advised all loyal Catholics to refrain from voting, or from accepting any office in the Italian government, and in 1895 the advice was stiffened into a command by the decree *Non Licet.* But this policy of non-coöperation did not prove a success. Italians

Non Licet.

as a people are too fond of politics, and of official emoluments, to abstain from activity in public affairs.

A change of policy.

The decree of thirty years ago has never been formally withdrawn, but its rigidity was considerably softened by the issue of an encyclical (1905) which not only permitted but encouraged Italian Catholics to vote whenever their abstention would result in the election of an avowed Socialist or anyone hostile to the Church. The promulgation of this encyclical led to the forming of a Catholic party in Italy, somewhat analogous to the Centrum in Germany; but prior to the close of the world war it did not develop any large measure of strength in the Chamber. This was partly because the restoration of the Pope's temporal power was deemed to be one of its principal aims and the great majority of the Italian people regarded this as an utter impossibility.

The Popolari.

During the world war, however, the relations between the Vatican and the Italian government became somewhat more friendly and when the war came to a close the Catholic party was reorganized with a new name and a somewhat broader program. It now became (1919) the Partito Popolare, or People's Party, with a platform which advocated many reforms in government but made no mention of the Roman question. Among internal reforms the Popolari declared for woman suffrage, proportional representation, a reconstruction of the Senate, together with a long list of changes in local government, in the judicial system, and in national finance. On the other hand they went clearly on record against socialism in all its forms and proposed a solution of the industrial problem by means of social insurance, coöperative production and the protection of the worker by law. This program made an effective appeal to the voters and at the general elections of 1919 the Popolari captured over one hundred seats. But the operations of the new electoral law cut down their strength appreciably and in the present chamber they have only forty members. For the present, therefore, and perhaps for all time the Roman question is in abeyance. It ought to be, for it is wholly inconceivable that Italy will ever willingly tolerate a Roman *imperium in imperio*, and it is almost inconceivable that any other country will ever force her to do it.

The second outstanding feature in Italian politics during the past fifty years has been the rise of the Socialist party. Social-

2. The rise of the Socialists.

ism did not make much headway in Italy for some time after the unification of the kingdom (1870). This was largely due to the fact that the more radical elements among the Italian proletariate tended rather to anarchism than to socialism. Socialism and anarchism, it need hardly be explained, are antipodal. The socialist wants the government to be all-powerful, to control all the agencies of production and distribution. The anarchist is opposed to governmental authority of every sort; he wants the government ousted from all share in the activities of the people. When attempts were made to organize a Socialist party in Italy the anarchists got control of it and by their violent hostility to the government drew retaliatory measures upon the whole movement. It was not until after 1890 that the Italian socialists were able to free themselves from the anarchistic taint and to set before the people a genuinely socialist program. This program, which was deemed ultra-radical thirty years ago, contained very little that would perturb even a Tory of today. Nearly all the aims of the first socialist program have since been achieved. At any rate the Socialist party grew steadily, although not rapidly, during the period 1875-1915. It began in the first-named year with a dozen members in the Chamber; but when Italy entered the war it had about fifty.

Their attitude during and after the war.

During the war period the Italian socialists supported the government, as in other countries, and took no unfair advantage of the national emergency. But when the war was over they emerged with a far more advanced program, and some of them, fired by the success of the revolutions in Russia and in Germany, became avowed communists. At the Socialist Congress of 1919 the party adopted a program of a maximalist or communist character, declared its allegiance to the Third (Moscow) International, demanded the abolition of the capitalistic system, and called for the introduction of the soviet plan. Ordinarily this program would not have made a strong appeal to the Italian people, but the non-socialist parties were unable to offer a united opposition or to agree on a common program. The whole country, moreover, was in a disillusioned and resentful mood because Italy seemed to have profited little from the war.

For these reasons, when the elections were held in November, 1919, the socialists captured 156 seats, thus becoming the largest single party in the Chamber of Deputies. It was found essential, therefore, to give them a considerable representation in the ministry, and to make one concession after another in order to keep the government functioning. The socialists were not strong enough to rule Italy by themselves; but they could at least prevent any successful rulership by others. Meanwhile the country drifted into disorder. Strikes and riots in various parts of the kingdom followed each other in quick succession. Local soviets were organized, after the Russian fashion, in many of the industrial cities. The workers began to seize factories and to commandeer raw materials. At Rome the ministry, headed once more by the veteran opportunist Giolitti, sat inactive—afraid to intervene with a firm hand. Italy, in 1920, was traveling fast along the road to communism.

3. The fascist movement.

It was at this point that fascism stepped into the breach. The origin of the Fascisti goes back to the early days of the war when Italy was still a neutral. At that time organizations were formed for the purpose of urging the country into the war on the side of England, France, and Russia—*fasci interventisti,* they were called. They were not anti-socialist except insofar as they blamed the socialists, among others, for keeping Italy out of the war. And when Italy joined the Allies in 1915 the reason for their existence disappeared. After the armistice, however, they were reorganized under a new name, *fasci di combattimento,* with Benito Mussolini at their head. Mussolini, a journalist by profession, was a former socialist. The aims of the reorganized Fascisti were to revive the national spirit, to assist the maintenance of order, and to combat the maximalist program by force, if necessary. The organizations did not acquire great numerical strength until 1920 when the industrial disorders occurred throughout Italy. Thereupon adherents flocked in by the thousands—former army officers, professional men, teachers, students, even peasants and wage-earners. The black shirt became their characteristic garb, and they were organized into companies under military discipline. They provided themselves with weapons as best they could and began drilling openly.

Its origin.

Meanwhile the socialists were having trouble within their own ranks. The more moderate element became alarmed at the excess of the extremists and repudiated the declaration of allegiance to the Moscow International. This split in the party made it virtually impossible to carry on the government, and the chamber was dissolved in 1921. The result of the election was a setback for the socialists who lost a considerable number of seats although they continued to be the largest single party in the House. To form a stable coalition was now more difficult than ever.

The struggle with the communists.

At this juncture the storm broke. The communist leaders called for a general strike of all Italian workers, and the Fascisti met the challenge by mobilizing in every part of the country. They manned the railroads and other public services which the strikers had deserted. They drove the communists out of factories and shops which the latter had seized, and handed these industries back to their private owners. They broke up the local soviets and raided every nest of radicalism that they could find. As the movement rolled like a tidal wave over Italy, the leaders decided to serve an ultimatum upon the ministry. From all directions the fascist organizations marched upon Rome in October, 1922; they encamped around the city and demanded that governmental authority be surrendered into their hands.

The electoral law of 1923 and the election of 1924.

The ministry capitulated. Mussolini was installed as prime minister with a cabinet of his own choosing. Then he warned the Chamber of Deputies that if it did not support the new administration it would be dissolved. The Chamber hastened to do as it was bidden. It gave assent to the measures laid before it, notably to the electoral law of 1923. For the first time in fifty years Italy was under the rule of a prime minister who (for the moment) did not have to placate any element among the deputies. With a stern hand Mussolini proceeded to cut down governmental expenses and to make the budget balance. He dismissed superfluous public officials in large numbers. He did not scruple to crush opposition and to stifle criticism wherever they showed themselves. Such actions helped to make his administration unpopular in many quarters, but some notable successes in the domain of foreign policy served to counterbalance their effect, and at the election of 1924 the fascists (or Nationalist party as they now preferred to call themselves) polled enough votes to give them control of the chamber under the provisions of the new electoral law. In a chamber of 535 members the Mussolini ministry started off with 374 supporters.

After the election.

In Italy, however, it is easier to secure a majority than to hold one. And in this case there was the obvious fact that the prime minister had received no genuine mandate from the country. His list of candidates had polled only forty per cent of the total vote. In this list, moreover, it had been found desirable to include a good many who were not Fascisti,—quite a few Democrats, Liberals, and even clericals who had seceded from the Popolari.[1] The purpose of this action, in the campaign of 1924, was to show the people that fascism did not aim at a party dictatorship but desired to maintain a government representing all the non-socialist elements. In other words Mussolini was trying to broaden the base on which his ministry rested.

The Nationalists in control.

The attempt did not prove to be a complete success. On the contrary it paved the way for trouble. The theory of the new electoral law was that a single party should be given absolute control of the Chamber and that there should be no more coalitions. But when the Fascists (Nationalists) submitted a composite list of candidates to the people and secured the election of this list they went counter to the spirit and intent of the law which they themselves had framed. They made a coalition ministry essential, for it is a tradition that the ministry shall represent all elements among its supporters in the Chamber. The ministry which was established after the unproportional election of 1924 was a coalition in the sense that it looked for support to more than a single party—to Liberals as well as to Nationalists. And it was not long before the Liberals began to withdraw their confidence in the ministry. From a merely numerical point of view these defections were not disastrous, but they included some outstanding political leaders who possessed a strong following among the people. Mussolini met this move by an extension of his repressive measures and a large section of the minority in the Chamber (known as the Aventine bloc) retaliated by withdrawing from all participation in its sessions. The ministry continued to command a numerical majority among the deputies, but some of its adherents were by no means in sympathy with its actions and could not be relied upon. The result was a virtual dictatorship.

Fascism in theory.

Fascism is sometimes spoken of as a dictatorship of the capitalists, in contrast with communism which is called a dictatorship of the proletariate. But that is not what fascism has claimed to be. Its professed aim is to place the well-being of the whole people above the interests of any class, whether capitalists or wage-earners, bourgeoisie or proletariate. It denies the right of any one class to govern the country for its own benefit. It calls for a cessation of class wars which benefit only those who are actively engaged in them and are a detriment to everybody else. But how are these class struggles to be avoided? "By asserting the supremacy of the government," the fascist replies! The government represents the interests of the whole people. It should be organized in such way as to show no favor to any class; it should be above all class control; and it should undertake such reconstruction of the whole industrial system as will ensure the diminution of all class hostility. This is a large program and one that would take many years to carry through.

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[1] In the list of 356 candidates submitted by the fascist leaders there were about 100 names drawn from non-fascist parties. No socialists, however, were included.

And in practice.

In actual practice, moreover, fascism has not borne a very close resemblance to what it purports to be. Its domination in Italy has had all the earmarks of a dictatorship. It has been intolerant of opposition even when manifested through legalized channels. This has been shown through its rigid censorship of the press and its unfriendly attitude toward freedom of speech. It has connived at intimidation of every sort. Its professions of neutrality as between the opposing industrial classes have not been borne out by the actions of the government. The masses of the Italian people were led to expect a comprehensive recasting of the relations between capital and labor, but nothing of any consequence has been forthcoming. It was inevitable, under these circumstances, that an anti-fascist reaction should come. And it has come with no uncertain sound. The advent of Mussolini gave Italy a measure of assertive leadership which the country had not possessed since the death of Cavour, but a leadership that was too dictatorial for a people habituated to government by deliberation and compromises. It is an axiom of political science that people crave strong leadership only when things go wrong; they resent it when things are going right.

Italian imperialism.

The fascist program embodies not only a domestic but a foreign policy. Its professed aim has been to win for Italy a more influential place among the nations of Europe. Italy, of course, has no great overseas empire comparable with those of Britain or France. Her colonial possessions are inferior to those of Holland and Portugal. It is not that the Italian people have been lacking in colonial initiative, or that they have been unwilling to emigrate in large numbers. It was an Italian who discovered the New World, and millions of his fellow countrymen have since followed him to both North and South America. No, the lack of a colonial empire is largely due to the perversities of Italian history. Italy did not become a nation until after the middle of the nineteenth century, and by that time most of the territories available for colonization had been taken up by other nations. There were still opportunities on the North coast of Africa, however, and Italy began to cast covetous eyes on Tunis. But France was too quick and forestalled her there. Meanwhile the Italians had acquired a footing on the western shore of the Red Sea and presently came into controversy with the contiguous Ethiopian empire of Abyssinia. In due course Italy asserted her suzerainty over this territory but when the time came to make good her claim she failed utterly. A military expedition which went in 1896 to impose Italian control upon Abyssinia was virtually annihilated, and Italy gave up her dream of an Ethiopian empire. She still retains, however, the colony of Eritrea on the Red Sea, and Italian Somaliland farther south.

Libya.

Italy's other overseas possession is Libya, which lies along the north coast of Africa between Tunis and Egypt. From the sixteenth century until the twentieth this area was under the sway of Turkey. On the outbreak of war between Italy and Turkey in 1911 the Italians invaded this territory and in the following year it was declared to be an Italian possession. Although the entire area is about four hundred thousand square miles the Italians have as yet asserted a mastery over only a small portion of it, including Tripoli and Cyrenaica. So the record of Italy's progress as a colonizing power is not an altogether brilliant one. Almost every step in it has been costly and disappointing.

Italy's colonial ambitions.

Yet the Italians cannot give up their colonial ambitions. Geography precludes their doing so. Italy is overpopulated; she has about one hundred and thirty inhabitants per square kilometer while France has only seventy and the United States only eleven. France and England, moreover, have large stores of coal and iron, both at home and in their colonies, while Italy had next to none. As regards the raw materials of industry, and even with respect to food, she remains in bondage to other countries and to the colonies of other countries. This means that Italy cannot hope to give employment to her growing population; she must expect a continued exodus of her people; and they must go to countries under a foreign flag unless the nation can manage to obtain some overseas territories suitable for colonization. In 1913 almost a million Italians left their native land. The war stemmed this hegira but only for the moment; under existing economic conditions it is bound to be resumed—not to the United States but to South America, to the British colonies, to northern Africa and elsewhere. Need one be surprised to be told that this persistent draining of the country gives Italy a serious problem, the solution of which is not yet in sight?

Italy and the Mediterranean.

Population thus gives Italy one of her most difficult problems, and geography furnishes another. Look at a map of Europe and you will see that Italy is the only great nation with a frontage upon a single sea. She is exclusively Mediterranean. Indeed, she has virtually no other means of commercial intercourse with the rest of the world, for her northern frontiers are guarded by mountains which make commerce difficult. Four-fifths of Italy's commerce is maritime. Her imports and exports, her security, her very existence depends upon freedom of navigation.

Yet Italy does not command the sea which means so much to her. England holds one entrance at Gibraltar and another at the Suez Canal, besides being entrenched at Malta. France stands sentinel at Toulon. The whole southern shore of the Mediterranean, with the single exception of the Libyan desert, is under the ægis of France and England. Hence it is that the Italians stand besieged within their own ocean. An enormous mileage of coast line is open to attack by any power that controls this ocean. A blockade can at any time shut off essential supplies of raw material and paralyze the industries of the nation. It is not enough to say that the Italians are themselves mainly to blame for this embarrassing situation inasmuch as they spent their time in civil strife while France and England were attaining national solidarity. Placing the blame does not always help to solve a problem, and anyhow you cannot indict a whole people. Italy needs more room. It is now her turn to insist upon a place in the sun, but where is she going to find it? That is a question that sorely troubles the Italian statesmen of today.

An excellent sketch of Italian political parties, down to about 1896, may be found in A. Lawrence Lowell's *Governments and Parties in Continental Europe* (2 vols., Boston, 1897), Vol. 1, chap. iv. An outline of developments since that date is given in Charles Seymour and Donald P. Frary, *How the World Votes* (2 vols., Springfield, Mass., 1918), Vol. II, pp. 98-120; also in Helen Zimmern and A. Agresti, *Italy and the Italians* (London, 1918).

On the fascist movement reference may be made to P. Gorgolini, *The Fascist Movement in Italian Life* (London, 1923); Odon Por, *Fascism* (New York, 1923); G. Ferrero, *Four Years of Fascism* (London, 1924), and Luigi Villari, *The Awakening of Italy* (New York, 1924). For a stirring indictment of fascism see G. Matteoti, *The Fascisti Exposed* (translation by E. W. Dickes, London, 1924). Mention should also be made of C. S. Cooper's *Understanding Italy* (London, 1923).

CHAPTER XXXVI

THE GOVERNMENT OF SWITZERLAND

> Among the modern democracies which are true democracies, Switzerland has the highest claim to be studied. . . . It contains a greater variety of institutions based on democratic principles than any other country.—*Lord Bryce.*

The land of the Swiss.

Switzerland has about one-third the area of New York State, and about one-third the population. She is thus one of the smallest of European nations, wedged in between three of the largest and most powerful—France, Germany, and Italy. Her people live on both sides of a great mountain chain, having spread themselves over the plateaus above and through the valleys below. The Swiss people are a mixture of races and have no national language. Most of them speak German, but in some parts of the country French and Italian are the languages of the majority. Nor is there any uniformity of religious belief. Protestants dominate twelve of the cantons while the Catholics outnumber them in the other ten. On the face of things, therefore, the Helvetic Republic lacks most of the cohesive forces which are commonly said to make for national solidarity—those which arise from community of race, language, and religion. Nevertheless, and in spite of all this, these four million Swiss are a united people and perhaps the most patriotic people on the European continent.

Early history of the country.

The beginnings of Swiss nationhood are to be found more than six hundred years ago when three small Teutonic settlements, or cantons, situated in the valleys of the Alps, entered into a perpetual league in order that they might be better able to defend themselves against their enemies. In due course other nearby cantons came into the league until eventually it contained thirteen in all and became known as the Swiss Confederacy. Time and again the country was attacked by its more powerful neighbors, but their attacks were beaten off and by the Treaty of Westphalia (1648) the confederacy was formally recognized as an independent and sovereign state. It was a rather loose confederation, however, with no permanent central government. Each canton managed its own affairs without interference from the others. Some of them were democracies of the direct type, ruled by mass meetings of all the citizens. When matters of common interest arose, it was the custom to summon a congress or Diet composed of delegates from each canton, but in this Diet everything had to be settled by unanimous consent. The action of a majority did not bind any canton against its will. The delegates met at irregular intervals and there was no federal executive to carry out their decisions. When the Diet was not in session, the confederacy had no official organ. The central government of Switzerland at this time was even more impotent than that of the United States under the Articles of Confederation.[1]

The French Revolution and its aftermath.

This was the situation in Switzerland when the French Revolution burst upon Europe in 1789. During the general wars which followed this upheaval the Swiss were drawn in, and very disastrously, for the French armies swarmed into the country in 1798. After some fighting they subdued all the cantons and abolished the confederacy. The country was reorganized under a unified government on the French model. It now became known as the Helvetic Republic and was divided into departments, the old cantonal boundaries being obliterated. Ostensibly the Swiss were given control of their own government, but in reality the Helvetic Republic became a vassal of France. The people resented this loss of their ancient independence, and various insurrections broke out, some of which were put down with great severity. When Napoleon came into power he decided to pursue a policy of conciliation and to this end he re-established the old confederacy and equipped it with a regular federal congress in which all the cantons were represented (1803). This arrangement was acceptable to the Swiss people and it continued in operation until after the collapse of Napoleon's military power at Waterloo.

Switzerland after 1815.

The Congress of Vienna, in 1815, permitted the confederacy to add three more cantons to its membership, making the total number twenty-two. Subject to some general restrictions it also allowed the Swiss to reorganize their government as they might see fit, and this they proceeded to do. By this reorganization the cantons regained much of the independence which had been taken from them during the period of French ascendancy. The congress of the confederation was reduced to something like its old impotence, but not entirely so, for it now met regularly and had a makeshift executive.[1] It had scarcely any powers except in time of war, and for that reason could accomplish little. In Switzerland, as elsewhere in Europe, the reactionaries ran things according to their own tastes during the years which followed the close of the Napoleonic wars. Both liberalism and nationalism were taboo. They made very little progress anywhere.

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[1] Robert C. Brooks, *The Government and Politics of Switzerland* (New York, 1918), p. 34.

The war of the Sonderbund, 1847.

Thus matters drifted along until the war of the Swiss Sonderbund in 1847. This civil war was caused by the formation of a *bewaffneter Sonderbund* or armed league among the Catholic cantons of Switzerland with the purpose of preventing any action of the majority cantons which might lead to a diminution of Catholic rights and privileges. To accomplish this end the Sonderbund was prepared to request intervention by the great Catholic powers, France and Austria. The Protestant cantons naturally became alarmed at this move, and through their control of a majority in the congress of the confederation they ordered the Sonderbund dissolved. This order was resisted, whereupon a lively but brief civil war ensued in which the Catholic cantons were defeated and their league suppressed.

The constitution of 1848 and the revision of 1874.

This episode had one good result: it convinced the Swiss people that their confederation was weak and ought to be strengthened. It also convinced them that Switzerland ought to have a new constitution with liberal provisions and adequate protection for the rights of minorities. A committee of the congress was therefore appointed to draft a new constitution, and this document was ratified by the cantons in 1848. Its adoption transformed the country from a mere league of independent states into a real federation, but the new constitution did not give the federal government sufficient authority and a movement to increase its powers was soon set afoot. The cantons did not like to surrender anything more, but eventually the people became convinced that there ought to be a greater centralization of authority. This was accomplished by a revision of the constitution in 1874, and this revision is today the constitution of the Helvetic Republic.[1]

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[1] It was a curious makeshift. The cantonal executives of Zürich, Lucerne and Berne took turns in serving as the executive officers of the confederacy, two years at a time.

Its form and contents.

The Swiss constitution is not a long document as modern constitutions go. But it is twice as long as the constitution of the United States, and the arrangement of its contents is rather confusing. This is because the various amendments have not been added to the end of the document, as is the American custom, but have been interpolated in the text. As thus amended, the constitution contains more than a hundred articles, many of them dealing with matters of detail which ought not to be put into a constitution at all. It does not contain a separate bill of rights, but various articles dealing with the liberties of the citizen are scattered through the document. Every citizen of a canton is a citizen of the confederation, but the federal government has the right to determine the conditions under which aliens shall be naturalized in the several cantons. This, rather strangely, it has never done, hence each canton has its own rules. Or, to be more accurate, each commune within each canton has its own rules of citizenship. The alien gets himself naturalized in Thun, for example. This makes him a citizen of the canton of Berne, and ipso facto a citizen of Switzerland. The constitution declares all Swiss citizens to be equal before the law; it guarantees freedom of the press and freedom of worship; but it does not mention trial by jury.

How amendments are made.

The Swiss constitution cannot be revised or amended except by majority vote of the people. There are two alternative ways of submitting such questions to the people, one involving action by the federal congress while the other requires the filing of an initiative petition signed by fifty thousand qualified voters. The machinery of amendment is not simple but constitutional amendments are on the whole more easy to obtain in Switzerland than in the United States.[2]

Nature of the federation.

Switzerland is a federal republic, a republic of cantons. There are twenty-two cantons and they are declared to be sovereign so far as their sovereignty has not been limited by the federal constitution.[1] Thus the Swiss constitution, like the American, is a grant of powers. The federal government has only such powers as have been granted to it; the cantons retain all the rest. Like the states of the Union they are paramount within their own reserved fields of jurisdiction. They have their own cantonal constitutions, and subject to three restrictions these constitutions may be framed as each canton sees fit. The three restrictions are that each cantonal constitution must provide for a republican form of government, must be subject to revision or amendment by popular vote, and must not contain anything that is contrary to the federal constitution.

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[1] Helvetic Republic or Swiss Confederation, not Swiss Republic, is the term officially used in Switzerland.

[2] Full details of the alternative Swiss methods may be found in Article III of the constitution. An English version is printed in W. F. Dodd's *Modern Constitutions* (2 vols., Chicago, 1908).

How the powers are allocated.

The distribution of governmental powers between the federal and cantonal governments is roughly similar to that in the United States. In this, as in some other features of their constitution, the Swiss have been much influenced by the American example. The federal government has control of foreign relations, but the constitution provides that the cantons (with the federal government's approval) may make certain agreements with foreign countries. The federal government has an exclusive right to send and receive diplomatic agents, to declare war and make peace, and to conclude treaties of an important nature. The Swiss military system, based upon universal training, is under its control. The federal government has control of the postal system; it operates the Swiss railroads (with a few minor exceptions) as well as the telegraph and telephone services. It has charge of the currency and has the exclusive right to issue paper money. It has control of banking; and has power to regulate commerce including the power to levy customs duties, but it has no right to lay direct taxes upon the people. If it needs more revenue than it can obtain from indirect sources the federal government may levy upon the cantons in proportion to their wealth and taxable resources.[2] It controls all available water powers, and has a monopoly in two fields of production, namely, explosives and alcohol. These are its exclusive powers.

Powers of the federal government.

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[1] More accurately there are nineteen cantons and six half-cantons. The latter have cantonal governments of their own, but each has only one representative in the federal council, whereas the other cantons have two representatives.

[2] In the constitution of the United States it is provided that the levy, save in the case of income taxes, must be according to population.

In addition the federal government has various concurrent powers, that is, powers which it exercises in common with the cantons. Among these are powers relating to the regulation of industry and insurance, the construction and upkeep of highways, the control of the press, and the encouragement of education. When the federal government exercises a concurrent power, its statutes prevail over those of a canton.

The Swiss and American republics contrasted.

The Swiss confederation resembles the United States in that the component parts of the union are deemed to possess equal rights. It is also like the United States in having a written constitution wherein certain powers are delegated to the federal government while other powers remain with the several states. But the Swiss confederation is unlike the United States in that federal powers are not, for the most part, carried into operation by the federal authorities. In most cases, when the Swiss federal government enacts a law on any matter within its jurisdiction, it leaves the provisions of the law to be carried into operation by the officials of the cantons. The federal officers merely inspect and supervise.[1] Even the military system, which will be described a little later, is under the immediate management of the cantons. All this means that the federal government has a relatively small number of administrative officers and employees. The legislative power of the Swiss federal government extends over a wider range than that of the government at Washington, but its administrative work does not extend so far. This policy of leaving administration very largely to the cantons has served to make federal centralization less obnoxious to the people. In the United States, as we have found, the strongest objection to any increase in the legislative power of the federal government generally arises from our knowledge of the fact that such increases are invariably followed by the creation of new federal bureaus with corresponding additions to our existing legion of administrative functionaries. The American people would much more readily give Congress power to regulate child labor, for example, if there were some arrangement whereby the uniform regulations made by Congress would be left to the several states for enforcement after the Swiss fashion. But every increase in the legislative powers of the American federal government customarily expands the federal bureaucracy. This is a serious defect of the American political system.

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[1] To this general rule, however, there are some important exceptions, including foreign affairs, the collection of customs duties, the management of the telegraphs, the telephone service, and the post office.

The Swiss federal parliament:

1. The upper chamber, or council of states.

The Swiss federal government consists of a legislature, an executive, and a judiciary. The federal legislature is divided into two chambers. The upper of these, known as the council of states, seems at first glance to be an almost exact reproduction of the American Senate, for it contains two members from each canton. But the resemblance is only superficial. In the United States the senators are elected by the people of the forty-eight states for six-year terms; in Switzerland the members of the upper chamber are chosen in such manner and for such terms as each canton may decide. In some they are elected by the people of the canton, in others by the cantonal legislature. The terms vary from one to four years. The two upper chambers, Swiss and American, are also quite unlike in their respective powers. The Senate of the United States has some highly important special prerogatives—the confirmation of appointments, the ratification of treaties, and the hearing of impeachments. The Swiss council of states has no special powers of any sort. Ostensibly it has exactly the same legislative authority as the lower chamber but in actual practice its share in lawmaking is considerably less important.

2. The lower chamber, or national council.

The lower chamber, or national council, is composed of about two hundred members elected from the various cantons under a system of proportional representation.[1] An election takes place every third year. Nominations are made by the various political parties, each of which presents a full or partial list of candidates in every canton. Or, as very often happens, a mixed (panaché) list is made up containing candidates from more than one party. Manhood suffrage is the rule. Every male Swiss citizen who has completed his twentieth year is entitled to vote, and any voter who is not a clergyman can be a candidate.[2] Woman suffrage has not yet been granted in Switzerland although a campaign for its adoption is now being carried on. The elections are not so keenly contested as in England or the United States and evoke a much smaller degree of popular excitement. This is partly because the political organizations are not so strong and close-knit as in English-speaking countries. They do not have the enthusiasm or the funds for an aggressive campaign. The Swiss, moreover, are politically the least volatile of all people having democratic government. They are not easily stampeded by the catch-phrases of a party program. Nowhere do the people think more clearly on political issues or vote with greater intelligence and discrimination.

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[1] Berne has the largest representation (34), while Zürich has 27, St. Gall 15, Basle 11, Geneva 9, and Ticino 8. The scheme of proportional representation, which is a very complicated one, is described in McBain and Rogers (see *above*, p. 639), pp. 109-112.

[2] A Protestant clergyman may become eligible, however, by resigning from the ministry.

Its methods of work.

The Swiss national council holds two regular sessions a year and occasionally meets for a third time in special session. The sessions are short, rarely exceeding four weeks. The council chooses its own presiding officer and he has the usual powers. Members may speak in German, French or Italian—and they do. You will hear them all in a single debate. This gives rise to no serious practical difficulties because every educated Swiss knows at least two languages and often three or four.[1] German, French, and Italian are recognized as official languages, hence most public documents are printed in all three versions, which is a source of considerable expense. The arrangement of the chamber is semi-circular, but the members are not grouped by parties as in other European legislatures. They sit by cantons in a neighborly fashion, each member with a little desk in front of him. When members of the ministry (federal council) attend they take seats on the presiding officer's platform. During the debates the speeches are not made from the tribune, as in the parliaments of France and Germany. Each member speaks from his place on the floor. The discussions are calm and businesslike; there is no disorder or uproar, and measures are discussed rather than debated.

Many observers have commented upon the excellence of Swiss parliamentary behaviour. It is partly due to the solid, unemotional qualities of the national character. The Swiss legislator, says Bryce, is accustomed to take a middle-class business view of questions, being less prone than the German to recur to theoretical first principles, or than the Frenchman to be dazzled by glittering phrases. Something must also be attributed to the fact that the fate of the ministry never hinges upon the outcome of a debate or vote in either of the Swiss chambers. The ministers, as will be seen presently, remain in office whatever happens. There are no interpellations to inflame partisan feeling. Visitors to sessions of the Swiss national council go away with a feeling that the proceedings are extremely dull—which they are to anyone who is looking for excitement. There are very few set speeches. There are no interruptions, no filibusters, no challenges to a duel outside. All this makes the Swiss chamber a somnolent place,—but it also explains why a year's business can be finished in seven or eight weeks.

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[1] In the Swiss upper chamber 80 per cent of the members are university men, in the lower chamber about 75 per cent.

Some outstanding features in the process of lawmaking:

1. The simultaneous introduction of bills in both chambers.

The process of lawmaking in Switzerland deserves a word for it presents some interesting features. Every bill is introduced simultaneously in both chambers. This differs, of course, from the practice in other countries, but it has the merit of ensuring that a bill will have independent consideration by two groups of legislators. In the United States, if a bill originates in the House of Representatives, and is killed in committee, it never gets before the Senate at all. Or if it is introduced in the Senate and rejected there, it does not reach the House calendar. In Switzerland a bill may be under discussion in both chambers on the same day.

2. Ministerial measures.

In Switzerland any member of either chamber may introduce a bill, but most of the important measures are brought in by the ministry or federal council. They have been carefully framed before the opening of the session. Either chamber, moreover, may by resolution request the ministers to prepare a bill on any specified subject, and this is not infrequently done. Bills of the type known as private bills and private member's bills in England, or as local bills in the United States, are relatively few. This is largely because the Swiss have made ample provision for taking care of this ancillary legislation by means of executive decrees (Verordnungen).

3. Little stress on committee work.

The Swiss chambers place very little emphasis upon committee work. Bills, when introduced, are not ordinarily referred to committees, although important measures may be so referred when either chamber orders this to be done. The discussion of a bill usually begins on the floor and in any event it must pass both chambers in the same form before it can become a law. If either one of them rejects the measure, or passes it with amendments, a conference is held between representatives of the two bodies and an agreement is usually obtained in this way. As a matter of practice the upper chamber does not often stand out against the will of the lower house. At times the council of states has insisted on defeating measures which the national council has favored, but such action is gradually becoming less common. The Swiss council of states does not possess the power or prestige in lawmaking that the American Senate commands. On the other hand it is more influential than the Senate of the French Republic. Unlike most upper chambers, moreover, it has not acquired a reputation for conservatism. No one ever speaks of the Swiss council of states as a citadel of reaction or a brake upon the wheels of progress.[1]

Joint sessions of the two chambers.

Ordinarily the two chambers sit separately, each in its own hall of the capitol at Berne. But on certain occasions and for certain purposes they meet in joint session. In joint session they elect various high officials of the confederation, namely, the members of the federal council or ministry, including the president of that body, the chancellor, the judges of the federal court, and the commander-in-chief of the Swiss federal army. In joint session, too, they decide conflicts of jurisdiction between the federal authorities.[2] Pardons are also granted by the two chambers sitting together, a joint session being held twice a year for this purpose. And the two chambers may, if they choose, meet together for the determination of various other matters set forth in the constitution, inasmuch as the constitution grants many powers to the Swiss parliament as a whole, leaving it to the two Houses to decide whether they shall act jointly or concurrently. The general practice, however, is to deal separately with all business except the matters above indicated.

The Swiss collegial executive.

The executive is the more interesting branch of the Swiss government. Virtually all other countries have single executives —a king, emperor, or president as the case may be. Switzerland has a plural executive which consists of a federal council, or ministry of seven members, elected by the two legislative chambers sitting together.[1] The choice is made immediately after each general election. They hold office for three years unless the lower chamber is dissolved in the meantime. In that case a new election is held when the legislature reconvenes. The constitution does not require that members of the two chambers shall choose the federal ministers from their own ranks, but in practice this is always done. On being chosen, the federal councillors vacate their seats in the legislative chambers and special elections are then held to fill the vacancies.[2] Reëlections to the federal council are common; indeed, it can fairly be said that when a councillor is once elected he remains in office as long as he desires. This permanence of tenure distinguishes the Swiss federal council from other European ministries.

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[1] The age of its members averages about 59 years, while that of the lower chamber averages about 56 years.

[2] In 1914 a constitutional amendment authorized the establishment of a federal administrative court to exercise jurisdiction over such administrative controversies as might be assigned to it by federal law; but this tribunal has not yet been created.

The President of the Confederation.

Every year the two legislative chambers, in joint session, elect one member of the federal council to be chairman of that body with the title President of the Swiss Confederation. But apart from presiding at meetings of the federal council and giving the casting vote in case of a tie, he has no constitutional powers of any importance. He is merely the titular head of the confederation and represents it on occasions of ceremony. But by custom he has become a sort of general overseer, responsible for inspecting the work of the various administrative departments, and the federal council may authorize him to act in its name. This it sometimes does in emergencies, but no act that the President performs in this capacity is valid until approved by the council. He is in no sense a prime minister, therefore; he does not select his colleagues, and has no authority over them. His powers are virtually the same as those of the other councillors although his functions may be somewhat different.

The Vice President.

The two chambers also elect one of the federal councillors to be Vice President of the Confederation. He presides when the President is absent and as a rule he is promoted to the presidency in the following year.[3] The constitution does not permit a retiring President to succeed himself, or to be elected Vice President, neither does it permit a Vice President to succeed himself. Thus it virtually compels rotation. On the other hand it does not preclude a second term if at least one year intervenes. Hence a minister who remains long enough as a member of the federal council is likely to have a second, or even a third, presidential term.

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[1] Not more than one member can be chosen from a single canton. By usage the two largest cantons, Berne and Zürich, are always represented in the federal council.

[2] Although the federal councillors may not remain members of either chamber they are entitled to sit and speak (but not to vote) in both chambers.

[3] Not invariably, however. During the world war Gustave Ador was promoted to the presidency out of his turn. This was due to the great prestige which he had acquired as head of the International Red Cross.

The chancellor.

The chancellor of the confederation is chosen by the two chambers sitting together, but he is not a member of the federal council. He is a sort of general secretary for the Swiss federal government, keeps all the records, countersigns various laws, resolutions and other official documents, and has charge of the holding of elections. His duties are largely clerical and routine, with little political significance. The office of chancellor in Switzerland is quite unlike the chancellorship in the new German government.

Functions of the federal council:

1. In general.

What are the functions of the federal council as chief executive of the Swiss republic? They are not wholly executive in their nature, but legislative and judicial as well. The Swiss government does not rest, like the American, on the principle of separation of powers. The federal council is a ministry in that it serves as the executive committee of the Swiss parliament. It is absolutely controlled by the latter and must obey all resolutions passed by the two chambers. If the councillors find themselves out of sympathy with any such resolution they do not resign, as in France or England; they merely pocket their own preferences and obey the will of the legislative bodies with as good grace as they can muster. As a matter of fact, however, the federal council is not often required to execute a *volte face* at the behest of the chambers. This is because the councillors are seasoned politicians, all of them. They have seen service in the legislature. They know how legislators feel, and what they are likely to do. As party leaders, moreover, they have a good deal of influence upon the members of their respective party groups in the two chambers. Hence, although the federal council must always bend to the will of the legislature when the latter insists, the actual situation is that the council more often leads the chambers. In important matters it usually obtains its own way or at least arranges a compromise. Leadership there must be in all lawmaking bodies, and in Switzerland it is the federal council that provides this desideratum. On various occasions the Swiss chambers have imposed a remarkable degree of confidence in the council's leadership, notably in 1914 when they conferred upon it "unlimited power to take all measures for the security, integrity and neutrality" of Switzerland during the world war. The chambers even went so far as to endow the council with unlimited credits to meet expenditures.

2. Executive.

The federal council, in the words of the Swiss constitution, is the supreme executive authority of the confederation. In the exercise of its supreme executive powers, it conducts the foreign affairs of the confederation, promulgates the laws, controls the federal army, and appoints all federal officers other than those who are chosen by the two chambers in joint session. It prepares each year the federal budget of estimated receipts and proposed expenditures. This budget is then laid before the chambers by the federal councillor who is in charge of the department of finance. It is explained and defended on the floor by him. After the budget has been voted by the two chambers the federal council assumes the duty of collecting the revenues and supervising the expenditures. The council also presents an annual report giving an account of its work in both foreign and domestic affairs, and this report is carefully gone over by the legislative chambers.

Interpellations on matters of executive policy.

The responsibility of the councillors for their executive acts is kept direct and continuous by the use of the interpellation. They may be interpellated in either chamber, on any subject, at any time. These queries, addressed to a designated member of the council, are formally answered as in the parliaments of other continental countries, and after the answer has been given the interpellator is entitled to say whether he is satisfied with it or not; but no vote is taken on the matter and even a discussion of it is not common although either chamber has the right to use an interpellation as the prelude to a debate if it so desires. The Swiss interpellation does not differ essentially from the ordinary question which is asked and answered during the question-hour in the House of Commons.[1]

3. Legislative.

The councillors, as has been said, have also some legislative functions. They prepare bills for consideration by the two chambers, sometimes in compliance with specific requests made by the latter.[2] All such measures are prepared by experts in bill-drafting who are regularly employed for this purpose. On the other hand, when bills are introduced by private members of either chamber they are referred to the council for its opinion before being acted upon. Thus it is that no measure is ever enacted by the Swiss parliament without its being first considered by the federal council. This does not mean, of course, that the council has a veto upon legislation, or anything approaching it. Indeed, it sometimes presents, at the request of the chambers, a bill that does not meet its own approval, and bills of this type have occasionally been passed. On some occasions, again, the chambers have enacted private members' bills on which the council has reported adversely The council, in a word, is expected to participate actively in the lawmaking process but not to feel hurt when its advice is disregarded. As Professor Dicey once said, it is like a lawyer or an architect in that its advice is sought and usually heeded; but it is not supposed to throw up its job in a huff whenever the employer wants things done differently.

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[1] See *above*, chap. x.

The ordinance power.

The ordinance power of the Swiss federal council calls for comment. The council has no general power to issue ordinances or decrees in elaboration of the general laws. It does not possess the authority which is exercised in this field by the French ministry. On the other hand the Swiss parliament, by resolutions passed from time to time, has given the ministers authority to issue orders and decrees covering routine and minor matters of various sorts.[2] In this way the two chambers have relieved themselves from the necessity of considering large numbers of minor, special, or private measures. This ordinance power of the federal council has been steadily growing. It underwent an enormous expansion during the world war and the effects of this expansion are still apparent.

4. Judicial.

Finally, the council has some powers of a judicial nature. Originally it decided controversies on points of constitutional law and also served as the chief administrative court of the confedera-

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[1] These requests are made by resolutions known as *postulates*. A postulate may ask the council to frame a bill, or to perform some administrative act, or indeed to do anything that the chambers may desire. Many postulates are voted at every session.

[2] They are known as *Bundesratsbeschlüsse*, *Verordnungen*, and *Règlements*. These terms, however, are not synonymous.

tion,[1] but many years ago the federal courts took over its jurisdiction in constitutional cases. Administrative jurisdiction it still retains although the constitution was amended more than ten years ago to enable the establishment of a special administrative court for this purpose.

The council as a cabinet.

Like the cabinets of other countries the Swiss federal council has both collective and individual functions. It holds two regular meetings a week, with a special meetings when the exigencies of public business demand. Its sessions are secret, and decisions are reached by majority vote. The president has a vote on all questions and when the council is deadlocked he has an additional vote. In general the federal council decides all matters of executive policy, prepares business for the legislative chambers, approves règlements for carrying out the laws, and in general performs the collective functions which are given to ministries in other European countries.

But the Swiss federal council is not a cabinet in the common acceptation of the term. The term cabinet implies a degree of party solidarity which the Swiss council does not possess. Its members are not drawn from a single political party or from a bloc of parties. They are not committed to any political program. They are not chosen to do party work or to serve the interest of any political party. On the other hand the councillors are very far from being non-partisan. They are men who have been, and continue to be, active in party politics. Hence they may, and often do, hold divergent views on questions of public policy. Not only that but they sometimes express their disagreements publicly—by speaking in the legislative chambers on opposite sides of a question. This, of course, could never happen in England or in France. Differences of opinion in the Swiss federal council do not lead to resignations. Such disagreements are merely left to the legislature for adjustment.

Its harmony with the legislature.

Disagreements in the ranks of the council are the exception, not the rule. In matters of routine administration the federal council displays a good deal of cohesion—outwardly at any rate. It does not ordinarily lay measures before the legislature until it has whipped them into such shape that all the councillors are agreed in support. Then the chambers, in most cases, accept the council's proposals with very little change. But not always, for occasionally the council's bills are rejected or greatly mutilated by the legislators. Even so, the councillors do not write their resignations and throw up their offices as in England or in France. They do just what members of the American cabinet do when Congress rejects some measure which they have strongly favored. They express their regret and disappointment, but they stay at their posts and try to carry out the will of the people as expressed by the legislature.

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[1] Its rulings, however, might be appealed to the federal assembly, that is, to the chambers sitting together.

A strong feature of Swiss government.

It has been said that the federal council, in thus combining responsibility with permanence, is one of the conspicuous excellences of the Swiss system.[1] It provides a plural executive with nearly all the merits of a unified executive. It enables Switzerland to keep in office her ablest statesmen irrespective of their party affiliations. A federal councillor is not retired to private life because his party happens to suffer defeat at the polls. Under the English, French, and American systems of government the ablest administrator in the land is virtually debarred from holding high office if his political party happens to be undergoing an eclipse. It is not so in Switzerland.

The Swiss system has the additional merit of assuring a greater continuity of executive policy than is normally possible in other countries. In England and in France this continuity is to some extent obtained by giving each executive department a staff which does not change when the cabinet falls; but in Switzerland the tradition of permanence covers the head of the department as well. On the other hand the Swiss system has the potential defect of tending to professionalize the whole administrative branch of the government from top to bottom. Thus far it has not created a bureaucracy of serious proportions; but the danger is assuredly there. When everybody connected with the executive branch of the government (from the highest official to the lowest) is assured of a relatively permanent tenure the inclination of the whole machine is to run in an established groove. To make sure that an administration will adapt itself quickly to changed conditions there should be provision for a periodical infusion of new administrators, especially at the top. Switzerland, as it happens, has managed to combine permanence with progressiveness in its federal administration, but it is by no means certain that other countries could adopt the Swiss system and count upon achieving the same results.

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[1] This is the view expressed by Lord Bryce in his *Modern Democracies* (Vol. I, p. 355).

Individual work of the councillors.

In addition to its collective functions the federal council has work which its members perform individually. Each of the seven councillors, including the President and the Vice President, is the head of an administrative department. These seven departments represent the usual division of administrative work as one would expect to find it in a small country.[1] Each department is divided into bureaus or services; but the number of federal officials in Switzerland (apart from the officials of the railroad administration) is relatively small. The reason for this has been already explained.[2] In recent years, however, the number of persons on the federal payroll has considerably increased.

The civil service.

These officials are not appointed in each department by the councillor who is in charge, but are named by the council as a whole. Naturally the recommendation of the councillor in charge of the department is influential. Switzerland has a competitive civil service system but it does not cover the whole range of subordinate officials nor does it in all cases operate as a check upon the discretion of the council. The council may disregard the results of the examinations and sometimes does so. It is said that a good many appointments are treated as patronage by the councillors, and there seems to be some basis for this assertion; but the evil has not yet assumed serious proportions. Nor is it likely to do so, for there are no sinecure positions in the public service. Those who work for the government have to work hard, and usually for a very modest remuneration. The Swiss are thrifty in government as in everything else.

The Swiss judiciary.

Turning to the judicial system of Switzerland, not much need be said. There is only one federal court—the *Bundesgericht*, it is called. It consists of twenty-four judges (and nine substitute judges) elected for a six-year term by the two legislative chambers in joint session. But the practice is to re-elect these judges on the expiry of their terms so that they virtually hold office as long as they desire it. For the trial of civil cases the court sits in three sections, to each of which a specified class of controversies is assigned. It has original jurisdiction in controversies arising between the confederation and the cantons, and in some other cases. It has appellate jurisdiction in cases which come up from the cantonal courts. In criminal matters it deals with accusations of treason against the confederation and with various other offences against the federal laws. Under certain circumstances other criminal cases may be sent before the court by the cantonal authorities. For the trial of crimes the federal court is divided into four chambers, one of which sits as a *chambre d'accusation* and functions as a grand jury. In all criminal trials before the federal court the accused is entitled to have issues of fact heard and determined by a jury of twelve—as in England and America. By far the largest number of cases, both civil and criminal, are handled in the cantonal courts and do not reach the federal court at all.

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[1] The departments are named as follows: (1) political, (2) finance and customs, (3) justice and police, (4) interior, (5) military affairs, (6) posts and railways, and (7) public economy (i.e. agriculture, industry and commerce). The "political" department includes not only foreign affairs but naturalization, federal election laws, emigration, and some other matters. This department is usually taken by the President, which means that its head changes every year.

[2] See *above*, p. 701.

Declaring laws unconstitutional.

The federal court can nullify a cantonal law if it finds the same to be in conflict with the federal constitution or with federal laws. But it has no authority to declare the unconstitutionality of a federal law. On the contrary the federal constitution expressly declares that "the court shall enforce all laws enacted by the federal parliament."[1] It is thus debarred from assuming the judicial supremacy which the Supreme Court of the United States has acquired during the past hundred years.

Administrative law in Switzerland.

Switzerland has a system of administrative law but no system of administrative courts. When controversies arise between the federal government and the citizen, involving questions of administrative law, the issues are not placed before a court but are determined in the first instance by the federal council, that is, by the ministers. If the ruling of this body is challenged, an appeal may be taken (as has been said) to the two legislative chambers sitting in joint session; but this is a slow and clumsy arrangement. It has long been regarded as unsatisfactory and a radical change has been under discussion for many years. No constitutional obstacle now stands in the way, for the constitution has been amended in such way as to give the federal parliament a free hand in the matter. But the latter, although committed to the principle of establishing a federal administrative court, has not yet been able to make up its mind as to how the court should be organized or what jurisdiction it ought to be given. Thus the matter has hung fire without any definite action. Controversies on matters of administrative law are not very numerous in Swiss federal government, however, because the great majority of administrative officials are agents of the cantons.

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[1] Article 113.

A word on Swiss politics.

One might expect to find many party groups in Switzerland, more than in France, Germany or Italy. For Switzerland has a population which is very diversified in race, language, religion, and economic interest. There is both a peasantry and a proletariate, although the latter is not relatively large. There are ancient animosities (particularly those arising from the Sonderbund of 1847) which have not yet been wholly allayed. In no country would there seem to be, at first sight, so much material for the constitution of factional groups or so many incentives to a regrouping of these factions. Offhand one might reasonably turn to Switzerland in his quest for the classic land of party disintegration.

The four groups.

But he would not find it so. Switzerland has fewer party groups than any of her neighbors. There are only four of any consequence. In the lower chamber of the Swiss parliament ninety per cent of the members belong to these four groups. As in other European countries they range from the Right to the Left, from conservatism to radicalism, but with the central groups usually dominant. The four chief groups call themselves Clericals, Agrarians, Independent Democrats, and Social Democrats. The third group has usually been the strongest. Party lines do not generally coincide with those of race, language, or religion—although the Clerical party draws its chief strength from the Catholic cantons. The Social Democrats, as is natural, come chiefly from the industrial cities. Some changes in party strength appear from time to time, but the ups and downs are by no means so abrupt as in other European countries. The Swiss are not ardent partisans. Their intense national patriotism seems to preclude the ardent allegiance to a political party that one finds elsewhere. The people are genuinely interested in public affairs, as is shown by the large percentage of the registered vote polled at elections; but they are not to the same extent concerned about the triumph or defeat of the parties to which they professedly belong. One reason may be found, perhaps, in the absence of professional politicians whose business it is to organize and stir up party rivalry. They do not exist in Switzerland because there is not enough patronage to support them.

The initiative and referendum.

Switzerland is the ancestral home of the initiative and referendum.[1] In one form or another these institutions of democracy have been used by the Swiss cantons for a very long time, and it is from Switzerland that they have spread, along the major routes of democratic infection, to various other countries including the United States. They are perhaps the most remarkable among all the institutions that democracy has produced, for they afford a means of lawmaking without the intervention of a legislative body, in other words a channel of direct action by the people. Nothing in the Swiss political system is more instructive to the student of modern democracy, for as Lord Bryce has said it "opens a window into the soul of the multitude."

A definition of the terms.

The initiative is an arrangement whereby a specified number of voters may prepare the draft of a law and may then demand that it either be adopted by the legislature or referred to the people for acceptance at a general or special election. If approved by the required majority it then becomes a law. The referendum is a device whereby any law which has been enacted by the legislature may be withheld from going into force until it has been submitted to the people and has been accepted by them at the polls. Thus the two agencies supplement each other; the intent of the one is positive—to secure the enactment of some measure which the legislative body has ignored or declined to pass; the intent of the other is negative—to provide a popular veto upon something which the legislature wants but which the people do not. As a rule the initiative and referendum go together, but they need not be conjoined, for either can exist alone.

They are ancient institutions.

Americans are accustomed to think of the initiative and referendum as novelties in government. They are commonly spoken of as "the newer agencies of democracy." But they are not new or modern in any sense. They are as old as democracy itself.

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[1] The claim is often made that the referendum originated in the United States. And it is true that in America it was first utilized in the adoption of state constitutions after the Revolution. But the referendum was not extended to ordinary lawmaking in the American states until the close of the nineteenth century.

All primitive government was either despotic or direct, that is, the king settled all matters of public policy for his people or the people did it themselves without the intervention of representatives. When the Roman historian, Tacitus, visited the Germanic tribes he found them settling all weighty matters by common voice in mass meetings of all the tribesmen. But with the growth of population, and the increasing complexity of civic relations, the practice of direct legislation gradually died out. Representative bodies arose—as in England, for example—and these parliaments or councils were supposed to represent the desires of the people in the proposing and enactment of the laws. Alone in some of the little Swiss cantons, through the agency of the *Landesgemeinde,* the practice of direct legislation survived and still continues. Here among the mountains, shut off from close contact with the outer world, a primitive institution was carried along through the ages and into our own day.

But outside Switzerland they disappeared for a time.

Their spread during the nineteenth century.

During the first half of the nineteenth century the referendum became a regular part of the lawmaking process in most of the cantons, although representative bodies were also functioning. In 1874 it was extended to federal laws by a constitutional amendment which provided that any 30,000 voters might by petition require the federal legislature to withhold a measure until the people had an opportunity to pass on it. The initiative was extended in the cantonal governments almost simultaneously and was also adopted in the federal constitution as a means of proposing constitutional amendments; but it does not yet apply to the making of federal laws.[1] This, however, is not a matter of much practical importance because the people, when they desire something that would ordinarily be enacted in the form of a statute, can propose it and adopt it in the form of a constitutional amendment. They have done this on several occasions.

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[1] The present status of the initiative and referendum in Switzerland may be summarized as follows: *The Initiative* is used (a) in all the cantons except Geneva for the revision or amendment of the cantonal constitution; (b) in all the cantons except Lucerne, Valais and Fribourg for the proposing of new laws; (c) in the confederation for proposing constitutional amendments (but not for proposing laws). *The Referendum* is used (a) in all the cantons on amendments to the cantonal constitution; (b) in all of them except Fribourg for the adoption of ordinary laws; (c) in the confederation for the adoption of constitutional amendments proposed by the federal legislature, and (d) in the confederation for ordinary laws where duly invoked by petition. But some of the cantons have the *obligatory* referendum, that is, all laws passed by the cantonal council must be submitted to the people, while others have the *optional* referendum, in other words a measure is not submitted unless a prescribed number of voters petition for such action.

How the initiative functions.

The procedure used by the cantons for putting the initiative into effect may be briefly described. Some group of individuals or some organization prepares the draft of a law. If the cantonal council is not willing to act favorably on it, a petition is circulated, and the requisite number of signatures gathered. The petition, accompanied by the draft, is then filed with the proper authorities of the canton and if they find the papers to be in proper form the question of accepting the measure is placed upon the ballot for the voters to decide. Meanwhile copies of the proposed law are printed and distributed to the people. Most of the cantons do not hold a special election whenever an initiative petition is filed; the more common practice is to submit them all (together with measures on which the referendum has been invoked) at regular elections which come on stated dates once or twice a year. In Zürich, for example, there are always two pollings—one in the spring and one in the autumn.

The referendum in practice.

In the case of the referendum the usual course is to provide that no cantonal law (except those of an emergency or a merely routine character) shall go into effect for a certain interval after the cantonal council has enacted it. In certain cantons, where the obligatory referendum has been established, this interval extends to the next election, and no petition is necessary to put measures on the ballot. Every law passed by the cantonal council (except emergency and routine measures) must be submitted and no law becomes operative until the people have accepted it at the polls. But in the other cantons no measure is submitted unless a specified number of the voters petition to have this done, and if no petition is filed within a certain time the law automatically goes into effect. If, on the other hand, any measure is petitioned against, and is submitted to the voters, an adverse majority at the polls will render it null and void. In the case of any law passed by the federal legislature the petition for a referendum must have 30,000 signatures, or, alternatively, the referendum must be requested by the authorities of at least eight cantons. The law, before the people vote on it, must be printed in the various languages (French, German, and Italian), and enough copies must be provided for all the voters.[1] Initiative and referendum elections are always held on a Sunday.

Extent to which direct legislation has been used.

The process of direct legislation has been used to a considerable extent in the various cantons, more in some than in others. On a nation-wide basis it has naturally been used to a much more limited extent. During the fifty years 1874-1924 only fifteen proposed amendments to the federal constitution were put forward by means of the initiative and submitted to the people. Of these only three were accepted at the polls. It should be mentioned, by the way, that the adoption of an amendment to the federal constitution, no matter how the proposal may be initiated, requires not only a majority of the voters as a whole, but a majority by the cantons as well. On the other hand the referendum has been invoked, during this half century, on a much larger number of federal laws—about forty of them in all. Of these more than half were rejected. These measures were of considerable variety; they dealt not only with broad questions of public policy (such as government ownership of the railroads and the reorganization of the army), but in many cases with matters of relatively minor consequence such as the licensing of commercial travellers and the regulation of trade in animals. On one occasion nearly four hundred thousand Swiss voters were asked to decide whether they would approve an appropriation for the salary of a secretary at the Swiss legation in Washington. By a large majority they voted *No*.

Merits and defects of the system.

As to the merits and defects of the system there is a difference of opinion among Swiss as among Americans. In neither country is any serious fault found with the use of the referendum for amendments to the constitution. Nor is there widespread objection to the use of the initiative as a means of proposing constitutional amendments. The controversy relates, in the main, to the employment of the initiative and referendum as agencies of ordinary lawmaking. This controversy has brought forth, both in Switzerland and in the United States, a long list of forceful arguments on both sides. It is urged (and denied) in both countries that direct legislation weakens the responsibility of the legislature, lowers its prestige, and causes its membership to deteriorate in quality. In Switzerland it is admitted that there has been some decline in political standards during the past fifty years, but the friends of direct legislation hasten to explain that it is due to other causes. It is often said that direct legislation retards political, social, and economic progress because the people are more conservative than their representatives. Lord Bryce speaks of this as the "most comprehensive and also the vaguest" objection to direct democracy. In Switzerland, it is true that the initiative and referendum have been used conservatively; but this may prove nothing more than that the Swiss are a highly-intelligent, cautious people who are not in the habit of swallowing panaceas or gulping at things because they are new. When in doubt they usually vote No, which is the sensible thing for any people to do.

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[1] When a law is submitted to referendum it must also be printed in Romansch (or "Ladin" as the French more often call it). This is a low-Latin language spoken in the valleys of the Grisons (Gräubunden) by about 40,000 persons.

Objection is also raised that the total vote cast by the people on ordinary laws in the cantons, and on constitutional amendments in the confederation, is often rather small. Hence, it is said, the decision is not made by a majority of the people but by a minority. There is some basis for this assertion, and there is bound to be, for when voters are frequently called to the polls (twice a year or oftener), many of them develop electoral fatigue and stay at home. Some cantons have tried the plan of making voting compulsory, and apparently to good advantage although the obligatory measures have not been rigorously enforced. One result of compulsory voting, as Swiss experience has shown, is that many voters merely come to the polls and drop blank ballots in the box. Much depends upon the importance of the measures submitted, and on the degree of popular interest which they evoke. A question which has any relation to race, religion, or class always brings out a much larger vote than one relating to political or financial routine.

All the stock objections to the initiative and referendum are in part verified, and in part disproved, by Swiss experience. People vote on questions which they do not understand. The peasant often goes to the polls with a financial measure in his hand and marks his ballot without any comprehension of what it is all about. Prejudice and ignorance decide the issues in some cases. The system involves a lot of expense and puts the people to no little inconvenience. On the other hand it has been a useful instrument of public education, for although many voters go uninformed this cannot be said of the most of them. The patriotism of the people has been stimulated by a sense of popular responsibility. Direct legislation, moreover, has provided the Swiss people with a check upon legislative bodies which otherwise would be entirely lacking, for there is no system of executive veto in Switzerland as in America. In any event the great majority of the Swiss people appear to be satisfied with their system of direct legislation and there is no likelihood that they will abandon it.

Government in the cantons.

Each Swiss canton has its own constitution and its own frame of government. A few are of the *Landesgemeinde* type, that is, they are governed by what Americans would call an enlarged town meeting. A general assembly of all the adult male citizens in the canton is called once a year to decide all important matters of cantonal policy. This meeting also elects a small council of five members which, like the board of selectmen in a New England town, functions through the year and performs such duties as the general assembly assigns to it. But most of the cantons are not of this type. They have no general assembly of the citizens. Instead the voters elect a grand council, as it is called, and this grand council meets frequently and serves as a cantonal legislature—subject, of course, to the use of the initiative and referendum. The election of this council is in most cases conducted according to the principles of proportional representation. The people of these cantons also elect an administrative council usually of five or seven members, and this body serves as the local executive.[1] In all the cantons, therefore, the system of government is simple, and by the same token, it is remarkably efficient. The Swiss have given the world a lesson in the art of honest and thrifty local government.

The Swiss military system.

A word ought to be added with reference to the military system of Switzerland, for it has commanded favorable attention in other countries. The Swiss constitution provides that every citizen is "bound to perform military service"; on the other hand the confederation is forbidden to maintain a standing army. In consonance with these two provisions a system of universal military training has been devised and the present legislation relating to it was adopted by the people at a referen-

Training of the men.

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[1] In two cantons, Fribourg and Valais, the members of the administrative council are appointed by the grand council.

dum in 1907. The work of training sometimes begins in the schools. At the age of nineteen every male citizen is examined as to his fitness for military service—the test is both physical and mental. Those who fail to meet the requirements are then given specialized physical or mental training to overcome their defects if they can be overcome. Those who satisfy the requirements are sent to a recruit school for a short period of intensive training. This lasts from sixty-five to ninety days according to the arm of the service (infantry, cavalry, artillery, aviation, etc.). From the age of twenty to the age of thirty-two the citizen is then enrolled in the Auszug or line army, and during this interval he undergoes short periods of training at one of the army training camps, comprising from eleven to fifteen days each year. At thirty-two he goes to the Landwehr or second line, in which the training periods are less frequent, and at forty he is transferred to the Landsturm or reserve where there is only an annual inspection of arms and accoutrements. An infantryman's total training, between the ages of nineteen and forty, amounts to about one hundred and fifty days.[1]

The officers

All army officers are taken from the ranks after passing the recruit school. They are given special courses of instruction which means that they must serve for more than the minimum training period. These officers, most of them, are regularly engaged in civilian pursuits; they are not soldiers by profession. There is, however, a small cadre of full-time officers, about three hundred of them, who serve as instructors in the training schools for recruits and in the special schools for officers. Yet despite this very small regular establishment the Swiss Confederation can mobilize an army of about 150,000 first-line troops within a few days and can add to this, from Landwehr and Landsturm, nearly as many more within a week. The entire available strength of this citizen army, assuming that every trained and physically fit man of whatever age could be utilized, is reckoned at about half a million. During the world war, although Switzerland remained a neutral, the government deemed it wise to mobilize as a measure of security. Without any difficulty a force of about 200,000 men was put on the frontiers. The whole Swiss military system, it should be remembered, is devised for defence alone. Universal military training has not engendered militarism, or diffused a militaristic spirit among the people. In witness whereof one need only point to the fact that Switzerland has engaged in no foreign war for over a hundred years although she has seen nations fighting all around her.

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[1] In addition there are rifle-shooting tournaments every year and marksmanship is the Swiss national sport.

A democracy without the ills of democracy.

So here is a democracy that has been spared most of the ills that democracy is presumed to bring in its wake. To what causes may this good fortune be ascribed? Partly to the smallness and compactness of the country, its natural defensiveness, and its varied resources. Partly also to the intelligence, patriotism, and good sense of its people. Partly, again, to the relatively equal distribution of property among them and the absence of any broad hiatus between rich and poor. And in part, finally, to sound traditions, firmly established, which form the surest basis upon which a government can rest. Some years ago, when Lord Bryce was in Berne making a study of Swiss government he talked with a well-informed and judicious young Switzer about the defects of the political system. "Yes, it has serious faults," the latter complained. "For example, a legislative committee sometimes goes to an agreeable hotel in the mountains during the summer months and there it sits for days having a pleasant time at the public expense. It is an outrage!" "Well if that is the blackest sin you can confess," replied the distinguished student of modern democracy, "you had better journey to Paris, Montreal, Pittsburg or San Francisco, and there you will soon find reason to bless the good fortune that made you a fellow-countryman of William Tell."

The best book in English on Swiss government is R. C. Brooks, *The Government and Politics of Switzerland* (Yonkers, N. Y., 1918). This volume contains an excellent critical bibliography covering all phases of the subject, but mention should also be made of an earlier book—J. M. Vincent's *Government in Switzerland* (New York, 1900). The chapters in President Lowell's *Government and Parties,* although written nearly thirty years ago, are still valuable on many matters. And in the first volume of Lord Bryce's *Modern Democracies* there is a hundred-page survey of Swiss institutions which for suggestiveness of comment would be hard to surpass.

CHAPTER XXXVII

THE GOVERNMENT OF RUSSIA

Meanwhile, it is singular how long the rotten will hold together, provided you do not handle it roughly. For whole generations it continues standing, with a ghastly affectation of life, after all life and truth has fled out of it.—*Thomas Carlyle*

Russia before the war.

Even well-educated Americans, for the most part, have very little conception of what Russia really is. They think of Russia as a nation in the same sense as England, France, or Italy. They visualize a broad expanse of territory populated by a Russian people, most of whom are illiterate peasants. But Russia is not a nation in that sense. On the contrary it is a great irregular checkerboard of territories and races. Before the war Russia was made up of at least ten quite distinct and none-too-closely-related areas, peopled by Russians, Poles, Jews, Finns, Letts, Turko-Tartars, and Mongolians. First, there was Russia proper, extending from the Baltic Provinces to the Ural Mountains, and from the Arctic Circle to the Black Sea. This vast region was peopled almost altogether by Russians—Great Russians, Little Russians, and White Russians. Northwest, west, and southwest of this region were Finland, Latvia, Lithuania, and Poland, inhabited by the people of a different speech and religion. Southeast, south, and east were Caucasia, Russian Central Asia, and Siberia. Here, again, people differed from the rest of the empire not only in speech and religion but in race. Such was Russia before the war, a huge salamander, sprawling over Europe and Asia, comprising one-seventh of the land surface of the globe, but every part of it contiguous. It covered more than twice the area of the United States and had nearly twice the population.

How the empire was created.

This huge empire was built up by accretion. In the earlier stages its growth was much like that of the United States. Traders and settlers moved to the frontier where they came into contact with the natives whom they mastered and whose lands they absorbed. But during its later stages the expansion of the Russian empire was more like that of Rome. It was a blood and iron performance. Unfortunately the Tsars were not organizers and administrators as the Cæsars had been. They built up a civilization that was Byzantine rather than Roman, Asiatic rather than European. This was due in great part to the fact that Russia, during the thirteenth century, came under the domination of the Tartars, and in the fifteenth and sixteenth centuries under the influence of Byzantine theological and political ideals. Not until the reign of Peter the Great (1689-1725) did Russia become subject to the influence of European civilization in any measurable degree. Tsar Peter did his best to Europeanize his empire but he was able to give it little more than a thin veneer.

Russia in the nineteenth century.

Yet Russia played an important part in European diplomacy during the eighteenth and nineteenth centuries. The echoes of the French Revolution hardly penetrated the great steppes; but when Napoleon was at the height of his power he made his voice heard there. Every student of modern history has read of the Corsican's march to Moscow, his retreat through the snows, and the utter collapse of his lordly venture. The Russians had a good deal to do with Napoleon's overthrow, for it was his ill-starred expedition into the heart of their country that sapped the military strength of France and made Waterloo possible. Russia had an enormous military advantage in being herself virtually invulnerable. She could conquer, but was herself immune from conquest. Her bulk and inaccessibility rendered her so.

Her political development.

Everything favored the development and maintenance of an absolutism in Russia—the vast extent of the country, the variety of races included in it, the militarism, the backward civilization, and the Oriental traditions. So the government became and remained despotic. From time to time the Tsars made various gestures in the direction of popular government but they did not mean much. The rulers were not willing to convey the substance of power to the representatives of the people. A wave of democracy swept over western Europe during the year 1848; it led to the framing of new constitutions in France, Italy and Prussia; it even compelled some political readjustments in Austria; but upon Russia it had virtually no influence at all.

Alexander II and the abolition of serfdom (1859-1866).

Some years later, it is true, the Tsar Alexander II abolished serfdom in Russia and improved the economic status of the peasantry; but he did not break the power of the landlords or grant the people any participation in the conduct of their national government. Alexander did, however, establish a certain measure of self-government in the provinces and districts. In these the people were permitted, by indirect election, to choose district assemblies (Zemstvos) which ultimately secured a considerable range of local authority.

The liberal movement 1866-1905.

These district and provincial assemblies afforded rallying points for a liberal movement which aimed at political reform in the empire as a whole. They grew steadily more assertive in their demand for a constitution and for the calling of a national parliament. But this liberal movement did not make much progress until after the close of the nineteenth century. Liberalism, in the autocratic circle surrounding the Tsar, was regarded as synonymous with revolution. The imperial authorities were so fearful of the very words constitution and parliament that they went to the ridiculous extreme of censoring them in all the newspapers.[1] Meanwhile the teachings of Karl Marx and his disciples were turning many of the younger liberals to socialism and providing recruits for a Social Democratic party.

Thus the situation drifted until Russia engaged in her unhappy war against Japan and met defeat on land and sea. This national humiliation caused such widespread popular resentment that autocracy became alarmed. The Social Democrats in Russia were growing more numerous and becoming more outspoken, despite the unrelenting persecution to which they were subjected. The disorders which they were able to foment, especially among the industrial workers, now gave the authorities more worry than ever. It was clear that the old policy of reaction and repression would have to be modified. So the imperial government, to secure its own preservation, decided to make a move in the way of concessions to the demand for a national parliament.

The constitution of 1905.

In 1905, therefore, the Tsar issued a series of decrees which professed to establish a constitution for his people. These decrees did not in fact abolish the autocratic system; on the contrary they asserted the executive supremacy of the emperor and reaffirmed his right to exercise an absolute veto over all legislation. They declared the Tsar's ministers to be responsible to him alone. On the other hand, they made provision for a national parliament of two chambers, namely, an upper house or Council of the Empire, and a lower house or Duma. In the Council of the Empire half the members were to be appointed by the emperor and the other half chosen for nine-year terms by the provincial assemblies, the landowners, the nobility, the chambers of commerce and industry, the church, and the universities. Membership was restricted to persons over forty years of age who held academic degrees. Members of the lower house, or Duma, were to be elected through the district assemblies or Zemstvos which were hereafter to be constituted on a basis of manhood suffrage. It was stipulated that no discussion of these decrees, or of military or foreign affairs, should take place in the Duma, but its assent was to be necessary for the enactment of general laws.

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[1] Baron Sergius A. Korff, *Autocracy and Revolution in Russia* (New York, 1923), pp. 7-8.

What it amounted to.

On paper this looked like a good start on the way to ultimate popular sovereignty. At any rate it brought Russia, in 1905, to the point that England had reached in the reign of King John, about seven hundred years earlier. But unhappily it did not prove to mark the beginning of a new era, and for two reasons: first, because the Russian people did not know how to use their new endowment of power effectively, and, second, because neither the Tsar nor his ministers accepted the new political arrangements in good faith. The first and second Dumas, which met in 1906-1907, contained too many liberals and radicals. They alarmed the ministers by their uncompromising talk. Under this radical inspiration the Duma showed itself in no mood to rest content, even for the moment, with the powers that had been granted to it. Some of its leaders fumed against the "sham constitution." In violation of the constitutional decrees it began to discuss ways and means of making the Tsar's advisers directly responsible to itself, and thus establishing a true parliamentary system. A list of reforms was drawn up which included the granting of an amnesty to all political prisoners and the breaking up of landed estates for the benefit of the peasantry. It also demanded the direct election of its members by universal suffrage. Some of its hot-heads went so far as to declare, quite openly, that the true mission of the Duma was not to pass laws but to precipitate a revolution.

The change in 1907.

These two Dumas, having proved themselves too obstreperous, were successively dissolved, whereupon the Tsar and his advisers decided that the time had come to change the system of election. A decree to accomplish this end was accordingly promulgated. It abolished manhood suffrage and provided that the voters should be divided into classes or *curiae*, namely, the landowners, the manufacturers and merchants, and the peasants and workers, with quotas of seats assigned to each class. It also made various other changes which aimed to give disproportionate representation to the propertied element among the voters. All this involved an open disavowal of the most important concession granted in 1905.

Its results.

The decree of 1907 proved effective. The third Duma, elected under its provisions, was much less radical and hence more amenable to ministerial control. In the main it obeyed instructions and was permitted to serve out its five-year term. The fourth Duma, which came into office during 1912, was still in existence when the world war began. But neither the third nor the fourth Duma was truly representative of the Russian people. "In order to acquire the right to exist," said one Russian liberal, "they had to become mere cogs in the mechanism of autocracy."

The autocracy of the early war years.

In this way the path to democracy which seemed to be thrown open in 1905, was closed again. The people had asked for bread and received a stone. The Russian liberals had been forced to join with the Socialists in believing that a parliamentary system could not be established in Russia by constitutional means. At the outbreak of the war this was the view held by all classes except the nobility, some of the landowners, and most of the great industrialists. For a time the great conflict seemed to unify the country, as war always appears on the surface to do. The Duma rallied valiantly to the support of the government; but when it urged some much-needed reforms in order that the war might be more successfully prosecuted after the defeats of 1914-1915, its advice was sternly rebuffed. Meanwhile the amazing incompetence of both the civil and military branches of the government stirred indignation among all classes of the people. On every hand there was evidence of waste and corruption. In this emergency, which called for the exercise of extreme tactfulness, the Tsar made the fatal error of choosing ministers of the most reactionary type whose only method of dealing with discontent was repression. Even the Duma, conservative though it was, and coöperative though it desired to be, began to chafe under the application of the mailed fist. Its tribune was the only spot in all Russia where anyone could freely speak his mind. So the members began to assail the ministers, and as time went on these assaults became more violent. Charges of treachery were made against the men who were directing the diplomatic and military operations. It was alleged that foodstuffs in large quantities were being shipped to the enemy, to Germany, while the workers in the Russian cities were on short rations. In the early days of 1917 there was a general opinion that nothing but a series of the most thorough-going reforms would avail to forestall a revolution. But the government did not move. It waited until the storm flashed from the sky.

The March Revolution 1917:

How it began.

The first Russian revolution began at Petrograd in March, 1917—just before the United States entered the war on the side of the Allies. It began as revolutions usually do. The starving population of Petrograd came out on the streets demanding food. The government undertook to disperse the crowds by calling out the troops of the Petrograd garrison, but the soldiers refused to obey the orders. On the contrary they joined the mobs which were now thronging the streets. Like the Parisians of 1789 the people now stormed the Russian Bastile, known as the fortress of St. Peter and St. Paul, and set the prisoners free. Meanwhile a self-appointed committee of the Duma assumed control of the situation, appointed a new ministry, established a provisional government, and promised that a new constitution would be prepared. In connection with all this the Tsar was compelled to abdicate.

Its second phase.

On the day that the provisional government was formed the representatives of the workers organized the Petrograd Soviet of Workmen's Deputies which became, a day or two later, the Petrograd Soviet of Workers' and Soldiers' Deputies. Both the soviet and the provisional government had different points of view and kept issuing contradictory orders. The soviet, by a series of decrees which the provisional government was forced to accept, virtually abolished the old military discipline and thus sapped the morale of the already half-demoralized army. To prevent further working at cross purposes the provisional government and the soviet formed a coalition in May, but their joint efforts did not avail to check the military and economic disorganization of the country.

The November Revolution, 1917.

As the situation grew worse towards autumn a radical branch of the Social Democrats, known as the Bolsheviks, secured for themselves an increased share in the management of governmental affairs and insisted that the revolution must be an economic as well as a political one. They were supported in this demand by the fact that the workers were already seizing the factories; the peasants were driving out the landlords and taking the land as their own. Now these Bolsheviks were not, as their name implies, a "majority" element among the Russian people; but they had a definite program which the soldiers and workers could understand. Immediate peace and a dictatorship of the proletariate were their objectives. What is more, they had vigorous leadership, which the constitutional revolutionists lacked. The parallel between the French Revolution of 1789 and the Russian Revolution of 1917 is in this respect quite striking. Even as power passed from Mirabeau to Danton, and from Danton to Robespierre, so it went (even more quickly) from Miliukov to Kerensky and from Kerensky to Lenin. During the late summer months, at any rate, the Bolshevik leaders managed to get control of the soviets in Petrograd, Moscow and the other cities. Then with the aid of the troops, they were able in November, 1917, to throw the provisional government out of power.

Russia becomes a communist state.

Thus the second Russian revolution was accomplished. A congress of the soviets now appointed a Council of People's Commissars, with Nicolai Lenin at their head. The new government forthwith proposed that peace be made by all the belligerents, and when this was declined it deserted the Allies and proceeded to negotiate a separate treaty with Germany. Meanwhile it issued a series of decrees which abolished private property, and declared the railways, the banks, the factories, the mines and the land confiscated from the bourgeoisie for the use of the proletariate. The Tsar and his family were put to death; many members of the nobility, landowners, former Tsarist officials, and intelligentsia were killed, imprisoned, or exiled;

soviet commissioners were put in charge of the industries everywhere; and the Orthodox Church was disestablished. Within a few months the country was placed on a communist basis—so far as decrees could do it. There were various attempts at counter-revolution, but none succeeded.

The constitution of 1918.

In the summer of 1918 the Congress of Soviets, now known as the All-Russia Congress, adopted a constitution which had been prepared for it by the Bolshevik leaders.[1] This constitution was not framed by men who had been elected for the purpose nor was it submitted to the Russian people for acceptance. It is still the constitution of the Russian Socialist Federated Soviet Republic, although it has been considerably modified by various decrees issued since 1918. In the meantime, moreover, certain large sections of Russia had declared their independence and had set up soviet republics of their own. Later they wandered back into the fold and in 1922 a general treaty of federation was made among them all. By this compact a Union of Soviet Socialist Republics was created, with a federal constitution which was ratified in 1923.[2]

The Union of 1922.

Fundamentals of the soviet constitution.

The constitution of 1918 began by declaring Russia a republic of soviets. Then followed a declaration of the rights which belong, not to the whole people, but to "the laboring and exploited masses." This portion of the document confirmed and ratified the action of the authorities in abolishing private property and nationalizing all the agencies of production. The suffrage, according to this constitution, was granted to all Russian citizens eighteen years of age or over "without distinction of sex, religion, or nationality, and without any residential qualification, provided they "earn their living by productive labor" and "do not employ others for private gain." Stipulation was made that this should include soldiers and sailors. On the other hand it was expressly provided that the following

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[1] The Bolsheviks, on assuming power, had promised to abide by the decisions of a constituent assembly, elected by universal suffrage. Such an assembly was elected, but a majority of its members proved to be out of sympathy with the Bolshevik program and in January, 1918, it was dissolved before it had accomplished anything.

[2] This Union includes the Russian Federated Soviet Republic, the Ukrainian Socialist Soviet Republic, the White Russian Socialist Soviet Republic, and the Transcaucasian Socialist Federated Soviet Republic. Of the old empire several portions, Latvia, Esthonia, Lithuania and Finland are now independent states; Bessarabia has been incorporated with Rumania, Kars with Turkey, and Russian Poland with Poland.

The suffrage.

classes should have neither the right to vote nor the right to hold office: (a) those who employ others for the sake of profit (ordinary household servants are not included); (b) those who live on income not derived from their own labor (e.g., interest, rent, or profits); (c) business men, agents, middlemen and other traders, (d) clergymen of all denominations, (e) persons who were connected with certain departments of the old Tsarist administration, and (f) the insane and those who have been convicted of "infamous or mercenary crimes." It was provided, however, that resident aliens, if engaged in productive labor should be entitled to the suffrage, and that the age limit of eighteen years might be lowered by order of any local soviet subject to the approval of the central authorities.

The excluded classes.

The foregoing provisions, it will be seen, did not establish universal suffrage. They excluded all except actual workers (including soldiers), and debarred the element known as the bourgeoisie which includes the professional classes, shopkeepers, and all employers for profit. The constitution of 1918 did not undertake to establish a democracy but a dictatorship, a dictatorship of a class. This was logical enough, for the whole theory of communist government is that all other classes are exploiters and parasites. Their existence should not be tolerated, much less encouraged, by granting them any political privileges.

The frame of soviet government in the Union:

1. The supreme power.

The frame of government which the constitution of 1918 established was extremely complicated. In some of its features it was unworkably cumbrous. This plan, nevertheless, served as the basis of the system which was incorporated in the Treaty of Union (1922) and is now in force for Russia, White Russia, the Ukraine and Transcaucasia. The highest organ of authority in the Union of Soviet Socialist Republics (SSSR) is the Union Congress of Soviets. This congress is made up of delegates from the urban soviets at the rate of one delegate for every 25,000 industrial workers, and from the provincial (guberni) soviets at the ratio of one delegate for every 125,000 rural inhabitants. Regular sessions of the congress are held once a year; in the interval between sessions a Union Central Executive Committee (TSIK), elected annually by the Congress, assumes the supreme legislative power. It meets every three months and sits for a fortnight. This executive committee is a large body, containing about four hundred members who sit in two chambers.[1] It maintains a Presidium, or steering committee of twenty-one members chosen by itself, and this body handles many matters of current business.

2. The executive functions.

The executive power rests in the hands of a cabinet, or Union Council of People's Commissars, as it is called. This body of fifteen commissars is elected by the executive committee (TSIK) and is responsible not only to the latter but to the Union Congress as well. One commissar is president, and four are rated as vice presidents. But each commissar (except the president) is the head of an administrative department such as foreign affairs, war and marine, foreign trade, transport, labor, and finance. The decrees and regulations of this Council of People's Commissars are binding on all members of the Union and are to be executed without delay in their respective territories. Within this council there has developed a small Sovarkom, or inner cabinet, which deals chiefly with non-political and routine matters.

Powers of the Union government.

The Union constitution transferred wide powers to the foregoing authorities, including the control of treaties and foreign affairs, the right to declare war and to make peace, to conclude foreign loans, regulate foreign trade, to make contracts of concession, to regulate railroads, posts and telegraphs, to control the military establishment, to establish a uniform currency and credit system for the Union, also a uniform system of taxation, and to standardize the system of weights and measures. The Union authorities were also empowered to "lay down general principles" to be followed by the constituent republics in the matter of civil and criminal law, judicial procedure, labor legislation, and schools. Finally, they were given the right to veto any law or decree of a constituent republic if in conflict with the treaty of 1922.

Such is the government of the Union of Soviet Socialist Republics. In structure it is merely an expansion of the plan adopted in 1918 by Russia proper and subsequently copied by the other soviet republics. The formation of the Union did not abrogate the constitutions of these four republics except insofar as they were inconsistent with the treaty of 1922 or with the Union constitution which is based thereon. Each constituent republic retains its own soviet frame of government but it is substantially alike in all four of them. This scheme of government is worth describing, if only to indicate how complex a political system can become when it is constructed in accordance with the principle of vocational representation. It is not necessarily connected with economic communism and might be established in a country without abolishing the capitalistic system. It has been condemned as an absurdity by many people who have only the faintest inkling of what it is all about. Some features of the scheme are absurd, to be sure, but it is not at all unlike the organization of an American political party under the delegate system.

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[1] One chamber is chosen by the Congress to represent each of the four constituent republics on a basis of their respective populations.

Analysis of the soviet structure.

Glance over the chart on the next page. It will be noted that at the bottom of the structure are, first, the groups of workers in the factories and shops of the cities and, second, the groups of peasants in the villages and rural communities. These groups (in each factory and each village) choose a local council or soviet. The local soviets then elect delegates to higher bodies. The village or rural (selo) soviets send delegates to a district (volost) congress of soviets; all the districts in a county send delegates to a county (uyezd) congress, and all the county congresses in a region send delegates to a regional (oblast) congress. The urban soviets send delegates to these higher bodies—to a regional congress of soviets above mentioned, to a congress of the province (gubernia) in which the city is located, and directly to the All-Russian Congress.[1] The rural soviets do not obtain direct representation in this latter body; they are indirectly represented by delegates from the provincial congresses and in some cases from regional congresses also. Thus it will be seen that representation is not in proportion to population or voters. The ratio is heavily in favor of the urban industrial population, for the reason that these bodies are deemed to be real proletarians and hence more loyal in their allegiance to the new order. The representation of the towns is fixed in terms of *voters* while that of the rural communities is set in terms of *inhabitants,* which is merely a way of disguising the discrepancy.

The All-Russian Congress of Soviets is the ultimate lawmaking

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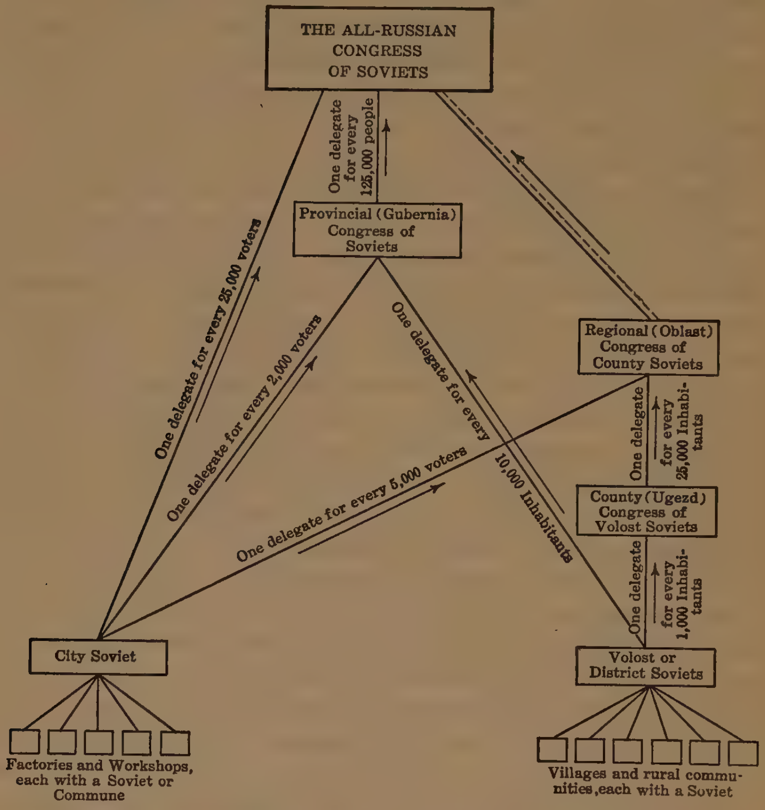
[1] This All-Russian Congress should not be confused with the Union Congress (*above* p. 731), although it is constituted in much the same way.

Russia proper—The All-Russian Congress.

authority for Russia proper—not for the Union. It consists of a single chamber made up of delegates representing the urban and provincial soviets as already explained. Its size is not fixed by the constitution, but if every section of Russia were to send its full quota of delegates, the congress would have several thousand members. It meets at Moscow twice a year


THE ALL-RUSSIAN CONGRESS OF SOVIETS
One delegate for every 125,000 people
Provincial (Gubernia) Congress of Soviets
One delegate for every 25,000 voters
One delegate for every 2,000 voters
One delegate for every 10,000 Inhabitants
Regional (Oblast) Congress of County Soviets
One delegate for every 25,000 Inhabitants
One delegate for every 5,000 voters
County (Ugezd) Congress of Volost Soviets
One delegate for every 1,000 Inhabitants
City Soviet
Volost or District Soviets
Factories and Workshops, each with a Soviet or Commune
Villages and rural communities, each with a Soviet

and has full lawmaking powers, except insofar as these powers have been transferred to the Union of Soviet Socialist Republics. When the Congress is not in session its powers are exercised by a large executive committee. Due to the unwieldy size of the Congress, and its consequent inability to handle the details of legislation, the practice now is to keep the executive committee in session the year round, even when the Congress is sitting. It virtually exercises the legislative powers of the Congress, but having 386 members is forced to do a good deal of its work through a presidium or sub-committee.

Executive functions in Russia proper.

In Russia proper, as in the Union, the executive functions are exercised by a cabinet of ministers which likewise is known as the Council of People's Commissars. This council contains twelve commissars, each of whom is the head of an administrative department or commissariat.[1] These commissars are chosen by the executive committee and are responsible to it; but they also report to the All-Russian Congress. The Council of Commissars must keep the committee informed of all its decisions, but in matters of urgency may act on its own responsibility. Attached to each administrative department is an advisory board. There is no provision for a prime minister, but the Council of Commissars has adopted the practice of naming one of its members as chairman or presiding officer.

The soviet theory of representation.

Now there are two outstanding features in this scheme of government. The first is its basis of representation. All other representative governments rest on a *geographical* basis, that is, the voters of a ward, county, arrondissement, constituency, or district, elect the members of the lawmaking body. No matter what their vocation, all the voters who reside in a designated area vote together. Thus a member of Congress, in the United States, may represent a district in which there are farmers, industrial workers, miners, railroad operatives, professional men, shopkeepers, and all the rest. He represents them as so many units of population, without regard to their varied circumstances or conditions of daily life. The assumption is that a voter's interests are affected by the place where he lives rather than by the vocation in which he is engaged. In other words the geographical system of representation assumes that locality-consciousness is more important than class-consciousness. Hence a lawyer is deemed to be a fit and proper representative of shopkeepers or farmers if he resides in the same congressional district with them; but even a farmer or a shopkeeper is not regarded as eligible to represent them if he lives outside the district.

The Russian system attempts to establish a *vocational* basis

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[1] One of the commissars is chairman, the remaining eleven have charge of the following departments; agriculture, food, finance, labor, interior, justice, education, health, social welfare, workers' and peasants' inspection and economic council.

Its reputed merits.

of representation.[1] It is true, of course, that geographical areas are also used but this is merely to make the vocational basis workable. People of different employments vote separately—miners in one group, iron-workers in another, soldiers in a third, and so on. Each group chooses representatives from its own class. A miner or an iron-worker in the All-Russian Congress does not represent Kiev, or Odessa, or the city from which he happens to come; he represents a class of people, irrespective of their residence. This, at any rate, is the soviet theory of representation. It is, according to its apologists, "an unmeasurably better form of representation" than the world has ever tried before, for it represents "real groups with a common purpose," in contrast with geographical districts which are declared to be "nothing but meaningless conglomerations."

As a theory there is something to be said for it. The geographical basis of representation is defective because it leaves out of account the fact that every voter belongs to a class or group, and is not merely a resident of a district. His class allegiance may be far stronger than his allegiance to the locality. Very often it is. Business men, wage-earners, farmers, professional men—they do not overlook the best interests of their own economic and social fellowship. There is no essential bond between two voters of different occupations for the mere reason that they happen to live in the same county. Neither can it always be taken for granted that men of the same occupation will think alike on questions of public policy. But on the whole it may fairly be argued that occupation forms a better basis in this respect than geography can hope to provide under present conditions of life. The change has been suggested, even in the United States. "It seems clear," says a recent writer, "that if the United States is to have in Congress a truly representative national legislature, the existing system of representation must be changed so as to admit of the representation, not only of population, as now, but also of recognized occupations or professions." [2]

[1] This soviet idea of representation is said to have been first proposed by the Owenists in England, nearly a century ago. It was given a short-lived trial during the French upheaval of 1848, but little was thereafter heard of it until the Russian troubles of 1905, and not until 1917 did it attain great impetus.

[2] William Macdonald, *A New Constitution for a New America* (New York, 1921), p. 133.

Objections to it.

But there is another way of looking at the matter. Can the well-being of the whole people be best promoted by distributing political power according to channels through which the various classes derive their livelihood? The soviet theory of government is based upon the principle that a man's occupation does, and should, control his attitude on questions of public policy. Too often, unhappily, it does. But should it be allowed and encouraged to do so? In the United States we have gone on the principle that men are American citizens first,—miners or iron-workers afterwards. We have proclaimed the doctrine that a man's interest in the welfare of the nation as a whole should exceed his interest in any class or organization. A congressman is elected by the voters of a district, but not merely to represent that district. He is paid from the national treasury by the whole people of the United States; he is the representative of the whole people. It is our frequent complaint that he does not always think continentally but is too much concerned, at times, with the interests of his own district. Now if he were elected by a class he would be in duty bound to represent that class; it could not be urged upon him that his function is to serve as a representative of the whole nation. The system would inevitably narrow the horizon of the representative to an even greater extent than our present arrangement does.

The distance that separates the people from the sovereign power.

The second outstanding feature of the Russian political system is the distance which separates the sovereign power from the people. In America the people directly choose both the executive and legislative branches of their government.[1] The President and Congress are only one degree removed from the voters. But in Russia they are several degrees removed. The Russian peasant for example, elects his village soviet; this body sends representatives to the soviet of the volost; and the latter elects delegates to a provincial congress. This provincial congress, in turn, is represented in the All-Russian Congress and in the Union Congress, both of which appoint central executive committees in their respective fields. Each executive committee then names a presidium or sub-committee and also a council of commissars who manage the administrative departments. The distance between peasant and commissar is so great that all responsibility is lost on the way. Theoretically the Russian people control their government. But they are required to exercise this control through a mechanism so attenuated that there is next to no popular responsibility at all. Thus the Bolsheviks have seized upon and utilized a maxim which the political bosses learned in America a long time ago, to wit, that if you want to make a government irresponsible you must first make it complicated and unintelligible.

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[1] In form, of course, the President is indirectly elected, but in fact the election is direct.

Supplemental machinery.

Not all the governmental machinery of Russia has been outlined in the preceding pages. In addition to the soviets, congresses, committees, and councils, there are special commissions of all sorts, permanent and temporary, ordinary and extraordinary. These have been established at various times and for a variety of purposes; they have been given powers and functions which are ill-defined and overlap those of other bodies. Some of them have been given praetorian authority to make decrees, to enforce them, and even to condemn those who violate their precepts. Best known among these was the Cheka, an extraordinary commission for the suppression and punishment of offences against the state, and particularly for the detection of attempts at counter-revolution. It had the power of life and death virtually without restraint. There are regular courts in Russia, and a regular judicial process; but the Cheka did not work through the courts. It investigated, tried, condemned, and executed through its own machinery. In 1922 this body was abolished and its investigating functions given to one of the administrative departments of the Union. The prosecutions are now conducted in the regular courts. These courts, of varying grades, are made up of elective judges and assessors.

What keeps the great mass of machinery in operation?

Now someone may ask the question: Why doesn't this maze of authorities and jurisdictions break down of its own sheer weight? Why doesn't the whole system come to grief through conflicts and misunderstandings between the authorities of the Union and those of the four republics, or between the latter and those of the provinces? The answer is to be found in the fact that one political party controls them all. The commissars are all Bolsheviks; they are all members of the Communist party, and they control the whole mechanism of soviets, congresses, committees, and councils. They do not divide control with any who are not of their own faith. There is no "loyal opposition" in

Russia. Anybody who opposes the Communist party is "counter-revolutionary" and disloyal. So, when disputes or conflicts arise they are settled within the dominant party's own ranks. They are party issues, not political issues. This domination of all geographical areas and all branches of the government by one political party, which brooks no opposition, is the key to the marvellous cohesion.

The soviet state as an end.

The Russian constitution of 1918 declares in flamboyant terms that it recognizes "the equal rights of all citizens" but it goes on to stipulate, in the very next paragraph, that no citizen may claim any privilege which might be used to the detriment of the socialist revolution.[1] For this reason the constitution does not incorporate any bill of rights. The Russian citizen has no rights as against the state. The socialist state is the end; the individual citizen is only a means. Thus the political philosophy of individualism is reversed. Freedom of the press, and of speech, as the rest of the world understands such freedom, is not reconcilable with this basic theory of Russian government. Such freedom is tolerable only insofar as it conduces to the strengthening of the new order. All this is logical enough, for if the chief end of man is to glorify the communist state and to help maintain a certain form of government, then the citizen can have no liberties that run counter to the attainment of these ends.

Economic policy of the government:

1. Towards agriculture.

The Russian revolution, when the Bolsheviks took hold of it in November, 1917, became an economic revolution. It aimed to abolish individualism and to establish a communistic state—to place control of all power, wealth, and property in the hands of the proletariate. The constitution of 1918 abolished private property in land and declared every foot of Russian soil to be the patrimony of the state. It added that this nationalized land was to be apportioned among agriculturists "in the measure of each man's ability to cultivate it." This constitution went farther and declared the nationalization of "all forests, all treasures of the earth, all waters of general utility, and all equipment, whether animate or inanimate." This declaration merely recognized a *fait accompli*, for the peasants had already driven out their landlords and taken the land. The government, although declaring the land to be state property, did not attempt to dispossess the peasants but allowed them to use the land as though they were the legal owners. For all practical purposes the peasant still owns his land. His children can inherit it, but he cannot sell it, at least he cannot give a valid deed to anyone else.

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[1] Article ii, sections 22-23.

2. Towards industry.

Meanwhile, in the cities, the owners of factories were ousted wherever they refused to accept the decrees of nationalization. Commissars, appointed by the government, were put in charge of the industries, but these officials were expected to manage them in harmony with the wishes of the workers who functioned through workers' councils or soviets, one for each factory. The workers were paid in scrip which entitled them to obtain food and supplies from government depots, for all private stores and all private trading were declared to be abolished. But this plan did not prove successful. The production of the factories declined, in part because the workers were now their own masters and could not be subjected to any effective discipline; in part also because they were underfed and unable to work at full efficiency. The factories also found it impossible to get enough raw material. And, what was even more vital, the commissars lacked the technical knowledge which was necessary to manage the industries. The government, as it turned out, was not able to provide enough food for the workers at its various depots and the whole population of the cities had to be placed on short rations. The peasants would not supply the industrial centers with foodstuffs unless the cities would guarantee, in turn, to provide the rural districts with manufactured products, and this, under the existing conditions, they were unable to do.

How this original policy has been modified.

So the communistic basis of industry had to be modified. In 1921 the government decided to restore private management of industry and private trading to a limited extent. It permitted individuals and groups of individuals to own and operate factories on the stipulation that the government be given a share in the ownership. It allowed shops and stores to be opened under government license. It even invited foreign capitalists to come and manufacture or trade under concessions. The Bolshevik leaders frankly admitted that communism had been applied on too extensive a scale and that there was no alternative but a partial restoration of individualism until the industrial life of the country could be stabilized. Thereafter, it was hoped, communism would once more spread itself over the whole field of industry, by easy stages. This continues to be the economic policy of the government. The private entrepreneur is given a chance, but when he shows any signs of becoming prosperous the government clamps the taxes on him and thus endeavors to prevent the rise of a new bourgeoisie.

The French and Russian revolutions compared:

Writers have been fond of comparing the Russian revolution of the twentieth century with the French revolution of the eighteenth. There are some striking similarities,—and also some notable contrasts. Both were uprisings against a despotism which had become honeycombed with inefficiency and corruption. Both began in the capital city by storming the prison, ousting the government, and placing the monarch under surveillance. In both revolutions he was later put to death. In both countries the revolution became more radical as it ran its earlier course, and then reacted in its later stages. Both revolutions inaugurated a Red Terror for the upper classes, abolished the state Church, harried the nobility out of the country, gave the land to the peasants, and issued floods of paper currency until the country fairly wallowed in it.

1. The similarities.

2. The contrasts.

But the French revolution came when France was at peace and had been for six years. In Russia the revolution occurred in the middle of a world war, with the country badly exhausted. The revolution took France into a war; it took Russia out of one. Economic conditions moreover, were widely different in the two great upheavals. France, in 1789, had only one large city. Outside Paris there was no industrial population in the modern sense. The only proletariate in France at that time (outside Paris) was the peasantry. But Russia, in 1917, had many industrial cities which had become dependent upon the rural districts for food and for the raw materials of industry. France, in 1789, had no system of railroad transportation; one section of the country was not dependent on the rest. In Russia, on the other hand, the economic system had become (to a degree at least) based upon the facilities for transport, and these broke down. Finally, and most important, the leaders of the French revolution had no clear ideas as to what they wanted in the way of economic reconstruction. They had no Marxian philosophy to serve as their guide. Hence they did not try to change the existing economic system from top to bottom by shifting it to a strictly communist basis. The French revolution was chiefly directed against the privileged orders—the nobility, the ecclesiastical hierarchy, the rich and powerful. The Russian revolution did not rest content with striking at these groups but went after the bourgeoisie as well. That is why writers speak of the French revolution as primarily political, but designate the Russian revolution as a social and economic overturn. Possibly they overemphasize this contrast.

The future. It is as yet too early to determine whether the world will find much similarity between these two great upheavals in their later stages. The French revolution produced a Napoleon who eventually made himself master of the government and abolished the republic. He restored the Church, reestablished the nobility, and set up in France a government more highly centralized than was that of the Bourbons before 1789. From the outbreak of the French Revolution to the height of the reaction an interval of about a dozen years elapsed. It remains to be seen whether Russia, as time goes on, will gravitate in the same direction. Will there be a gradual drift to the usual type of popular government, to a unified executive, to individualism, and to a stabilized economic life?

Note on the *Third Internationale.*

In contemporary discussions of Russian affairs, and particularly of communist propaganda, one frequently encounters mention of the Third Internationale. What is it? Karl Marx, the founder of Marxian socialism, organized in 1864 the first International Working Men's Association, which became known on the continent as the *First Internationale.* His idea was to bring together, in one giant representative organization, the socialist comrades of all nationalities. It held several congresses but the collapse of the Paris commune, which the First Internationale had fervently supported, led to its disruption and in 1876 it was formally dissolved. In 1889, however, a *Second Internationale* was organized at Paris, and between this date and the outbreak of the world war seven further congresses were held, with delegates from the socialist organizations of all countries. At the Paris congress of 1900 an international socialist bureau was created with certain propagandist functions. The outbreak of the world war in 1914 split the socialist organizations of the various countries and completely disrupted the Second Internationale but it was finally reconstructed by the more conservative labor and socialist elements in 1919. The more radical socialists, however, would not come back into the organization; instead they convened at Moscow and under the leadership of the Russian Communist party organized the *Third Internationale.* This body is ostensibly representative of communist organizations in all the chief countries of the world, but its headquarters are in Moscow and it is largely under the domination of the Russian Communist party. Its aim is to "unite the efforts of all revolutionary parties of the world proletariate and to thus facilitate a communist revolution on a world-wide basis." It is one of the chief vehicles through which the foreign propaganda of the Russian Communist party is carried on.

An English translation of the Russian constitution of July 10, 1918, is printed in H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1920), pp. 376-400. See also Andrew Rothstein, *The Soviet Constitution* (London, 1923), and *Soviet Russia* (London, 1924). This last-named publication contains a translation of the constitution of the Union of Soviet Socialist Republics (July 6, 1923).

Many books on all phases of Russian politics and economic conditions have appeared during the past few years. It is impracticable to give even a selection from this formidable mass of literature here. A classified list, containing all that is worth while, may be found in the *Statesman's Year Book,* at the close of the material on Soviet Russia.

CHAPTER XXXVIII

AUSTRIA, HUNGARY, AND THE SUCCESSION STATES

> The Hapsburg empire was a governmental system, not a nation, and after the rise of the principle of nationality in the nineteenth century it had held together against powerful currents of disintegration because the ruling classes of its various elements believed their prosperity and security were better guaranteed by remaining in the empire than by separating from it.—*H. A. Gibbons.*

Mediæval Austria.

The history of those regions which are now included in Austria, Hungary, and the succession states (Poland, Czechoslovakia, Jugoslavia, and Rumania) is full of complications. Austria was a part of the Holy Roman empire during the later middle ages, and at times the dominating factor in that loose aggregation. Her unity and strength enabled the Austrians to extend their sway over the bordering states, and in the early part of the sixteenth century both Bohemia and Hungary came into the Hapsburg orbit. Further extensions were made during the next two hundred years, and although Silesia was lost to Prussia in 1750 the Austrian emperors continued to dominate the politics of Central Europe down to the time of the French Revolution and even thereafter.

Austria's emergence from the Napoleonic upheavals.

Austria emerged from the Napoleonic period with more territory than she had when the wars began. At the Congress of Vienna she was given nearly all that she asked for. The Hapsburgs gave up some territory, it is true; but they were well indemnified by being given rich provinces in Northern Italy. This made their empire more compact, and more populous than it had ever been. On the other hand the Austria of 1815 was not racially homogeneous. It was indeed a veritable maze of nationalities, for it included not only Austria proper, but Bohemia, Hungary, Transylvania, Croatia-Slavonia, and the Italian provinces. This meant that the House of Hapsburg ruled a composite of Germans, Hungarians (Magyars), Croats, Slovenes, and Italians, none of whom had any close affinity with the others. If ever there was a political entity which defied the principles of racial self-determination it was Austria as the Congress of Vienna left her.

Social and political structure of the empire after 1815.

To outward appearance, however, Austria was a Germanic empire. Her ruling dynasty was German. Her capital, Vienna, was a city of people who spoke the German language. And Austria, as will be remembered, was a member of the old German confederation whose congress wrangled itself into oblivion during the middle decades of the nineteenth century. Yet the German Austrians formed a minority of the population, a very decisive minority. They were far outnumbered by Slavs and Hungarians, nevertheless they insisted upon controlling the government and to a large extent were successful in doing so by confining political power to the hands of a ruling class and thus thwarting the rise of democratic institutions. Absolutism in government, feudalism in society, special privileges for the favored few, oppression and misery for the masses—such was the condition of Austria after 1815.[1]

The era of reaction 1815-1848.

Great wars, as has been said, are almost invariably followed by a strong swing to the Right, and the titanic struggle which ended at Waterloo inaugurated an era of conservatism in every European country. In Austria the reaction went farther than anywhere else, with the possible exception of Russia. The emperor ruled as an absolute sovereign through ministers who were responsible to him alone. The great Austrian minister of this era was Metternich, who made it his life-long task to crush liberalism and democracy wherever they appeared. He was a Bourbon in everything but name, a man of the status quo, who regarded all new ideas as bad ones. There have been such in all ages—but not many of them have managed to govern thirty million people for nearly forty years, as Metternich did.

Metternich.

During Metternich's ascendancy all political life among the Austrian people remained moribund. There was a vigilant censorship over everything that smacked of popular liberty. No freedom of the press, of speech, or of public meeting, was tolerated. But although Metternich could imprison men he could not incarcerate the progressive political ideas which gained vogue everywhere as the nineteenth century wore on. The spirit of nationalism, the desire of races to secure a larger share in the guidance of their own political destinies, began to show itself in Bohemia, in Hungary, and in the Italian provinces. It found leadership in such men as Palacky, Kossuth, Deak, and Cavour. Unrest and expectancy surcharged the air. Peasants and workers had grown tired of the old order and were beginning to demand a new world of their own making. The seeds of a political upheaval were germinating rapidly in the Hapsburg empire when the great reform wave of 1848 swept across the face of Europe. Neither Alps nor Carpathians proved tall enough to stem its force.

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[1] Charles D. Hazen, *Europe Since 1815* (New York, 1910), p. 26.

The movement of 1848.

The convulsions of 1848 began on the Seine but soon made their way eastward to the Danube. Riots broke out in Vienna. Metternich, after thirty-nine years of power, was forced to flee. Hungary virtually declared her independence and adopted a series of laws which modernized the Hungarian government. Bohemia came forward with an ultimatum which demanded all sorts of reforms. And the Italian provinces, as has already been mentioned, attempted to shake off the Austrian yoke.[1] The government found revolutions under way in all directions. In its hysterical endeavor to conserve the unity of the Danubian state it made one great concession after another, but to little avail. The conflagration spread with marvellous rapidity and in this welter of disintegration it seemed for a time as though the empire would be torn into a dozen fragments.

How it collapsed.

Yet that was not what happened. The various races had common grievances but they could not unite against a common oppressor, hence the government was able to crush the uprisings one by one. Bohemia was subdued; the Italian provinces were recovered; and Hungary (with the aid of Russia) was crushed under the iron heel. Thus Austria came through her great emergency in triumph, and almost by miracle as it seemed. By the end of 1849 she was more than ever in a position to impose her will upon this congeries of states and races. And for a time she did it without scruples or leniency. The concessions were revoked and absolutism once more took the saddle. But not for long, because the war of 1859 disclosed the weakness of the whole imperial fabric and made imperative the strengthening of it by some form of practical reconstruction. Austria, it was clear, could not remain a great power without welding her various races more closely together.

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[1] *Above*, p. 663.

The two alternatives and the ultimate choice.

There were two alternatives—federation or centralization. The various parts of the empire could be given a measure of autonomy and yet be linked up by a federal government representing them all. Or, the entire governmental authority might be centralized in Vienna but put on a liberal basis. Ultimately the emperor decided for centralization and in 1861 promulgated the first imperial constitution with provision for a representative parliament. But Hungary declined to participate in the new government and this constitution had to be superseded by a new one in 1867. In the same year an agreement known as the Ausgleich was made with Hungary and this agreement virtually conceded the Hungarian demand for recognition as an equal partner in the empire.

The Ausgleich of 1867.

The constitution and agreement of 1867 established a new form of state, a dual monarchy or joint kingdom. Austria-Hungary now became neither a federal nor a unitary empire but a dualism. Both kingdoms were recognized as fundamentally independent, each with its own constitution, parliament, ministry, and courts. Each was entitled to govern itself, as respects internal affairs, without any interference from the other. Yet they became equal partners in a joint enterprise—with the same monarch, a common flag, a common citizenship, and a channel of common action by means of joint delegations. This arrangement constituted more than a personal union (as was that of England and Scotland in the seventeenth century), but less than a federation. It was a contribution to the world's museum of political curiosities.

The three fundamental laws of the duality, 1867-1918.

The government of this dual monarchy, from 1867 to its dissolution after the military collapse of 1918, rested upon three constitutions—if such they can be called. First was the Austrian constitution of 1867, a series of five organic laws known as the *Staatsgrundgesetze*.[1] Second was the constitution of Hungary. This Hungarian constitution was not a single document, nor yet a series of organic laws promulgated on the same day, but a string of decrees and enactments dating from the

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[1] These five organic laws were all promulgated on the same day (December 21, 1867) and might just as well have been combined into a unified constitution. Provision was made that they could be changed by a two thirds vote of both Houses. The text of the *Staatsgrundgesetze* may be found in Lowell's *Governments and Parties* (Boston, 1897), vol. ii, pp. 378-404.

Golden Bull of 1222 down to the year 1867.[1] And, finally, there was the Ausgleich or law of partnership which in the latter year determined the future relations of the two states.

1. The Austrian constitution of 1867.

In Austria the constitution recognized the emperor as the hereditary chief executive.[2] Provision was made for a ministry, appointed by the emperor. The Austrian constitutional laws of 1867 stipulated that all official acts of the emperor should be countersigned by a minister, but they did not expressly prescribe that the minister should be responsible to parliament. In due course the outward forms of ministerial responsibility developed, but the principle never acquired much vitality because the clash of factions in the Austrian parliament made it easy for the emperor to hold the balance of power and thus to choose ministers at his own discretion. These ministers, with a vast bureaucracy of subordinates under them, served as the real forces in Austrian government during the old régime.

The emperor and the ministers.

The old Austrian parliament.

The constitutional laws of 1867 gave Austria a parliament of two chambers—a House of Lords (Herrenhaus) and a House of Representatives (Abgeordnetenhaus). The former was made up of certain hereditary peers, archbishops, and an element of life members appointed by the emperor. This last-named group steadily increased in size until it became a very important factor in the upper House. The representative chamber was at first made up of members chosen by the provincial legislatures of Austria, but this plan was soon found unworkable and in a few years the organic law was amended to provide for the election of members by the people. But not on a basis of equal suffrage, for the voters were divided into five classes, chiefly according to the amount of taxes paid by them, and each class was given a definite number of representatives.[3] This cumbrous five-class system of voting continued until 1907 when it was replaced by a plan of equal and direct manhood suffrage. A redistribution of seats was also made in the same year.

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[1] Later supplemented by the Law of 1874 on the Table of Deputies (see W. F. Dodd's *Modern Constitutions* i, 105), and the Law of 1885 altering the organization of the Table of Magnates.

[2] Francis Joseph was emperor in 1867. He continued in this post until the middle of the world war (1916) when he died and was succeeded by his nephew, Karl, who found himself deposed in 1918.

[3] Four classes were created by law in 1873; a fifth class of "general voters" was added in 1896. This fifth class, however, elected only a small minority of the members.

The lack of parliamentary control over the executive.

Ostensibly the powers of the two Houses were the same, except that all financial measures and all bills affecting compulsory military service had to originate in the House of Representatives. The assent of both chambers was necessary for the enactment of laws, but when they disagreed on any financial measure the lower figures were deemed to be adopted. If the Austrian parliament happened to be in recess it was provided that the emperor, with the advice of his ministers, might enact emergency laws (other than financial measures), with the understanding that all such emergency legislation must be submitted to parliament when it reconvened. The ministers might be interpellated in either House but this procedure amounted to little because they were not under obligation either to resign or to modify their policy when parliament failed to record its confidence after an interpellation. The ministers merely played one parliamentary group against another, making reluctant concessions here and there as the exigencies of the moment dictated.

A great bureaucratic state.

Thus Austria, before the war, had the forms of popular control without the usages which alone can make popular government a reality. The will of the emperor, as in Germany, was the dominating factor in all matters of public policy. His ministers were not always able to impose this will upon parliament, but by one device or another they usually managed to do it. A vast, highly-professionalized corps of bureaucrats assisted in the work. These administrators possessed a wide range of authority and they exercised much of it in an arbitrary way, disregarding the inalienable rights of the citizen as we understand them. A rigid censorship and a close surveillance of all public gatherings was maintained by them, and to make the situation worse, there was a good deal of venality. On various occasions this corruption in the Austrian civil service was brought to light, but no general housecleaning followed. In a word, the old empire provided itself with a government of men, not of laws, and unhappily it was not always a government of honest men.

2. The constitution of Hungary.

Hungary, from 1867 to 1918, was also governed by its own constitutional laws and decrees. The Austrian emperor was, ex-officio, chief of state in Hungary, with the title of apostolic king. At Budapest he had a ministry, chosen by himself, but here the ministers were not only in theory but in fact responsible to the Hungarian parliament. This true ministerial responsibility gained vogue in Hungary because the Magyars were adroitly able to control a clear majority in both Houses and had a definite policy besides. The Hungarian parliament consisted of two chambers—a House of Magnates and a House of Deputies. The former was made up of hereditary and ex-officio members while the latter was an elective body. It did not rest on manhood suffrage, however, for there was a small tax-paying qualification. On the whole, Hungary had a greater measure of popular government than her sister state.

3. The constitution of the dualism.

In addition to the separate governments of Austria and Hungary, as thus briefly outlined, there was maintained a joint government, in skeleton form, as provided by the Ausgleich of 1867. Here the emperor-king stood at the head and directed such affairs as had been prescribed as common for the two partner-states.[1] In this work he was assisted by three ministers (foreign affairs, war, and finance) and a court of audit. These ministers and auditors were appointed by himself. The Ausgleich did not provide for a federal parliament of any sort.

The delegations.

Instead it stipulated that committees or delegations from the parliaments of Austria and Hungary should be summoned every year (alternately at Vienna and at Budapest) to deliberate upon the granting of funds for the joint enterprise and for the determination of general policy within their allotted sphere. The two delegations, of sixty members each, chosen by their respective parliaments, did not sit together but considered all matters separately and decided them by concurrence. If, however, no agreement by concurrence proved possible, either delegation was entitled to demand a joint session and the matter was then decided by majority vote without any debate or discussion.

How the dual government functioned.

The jurisdiction of this dual government did not extend very far, but it dealt with vital matters as the event proved. Foreign affairs were managed in common, and not well managed as it turned out. Never has the world seen a more blazing display of diplomatic folly than was embodied in the Serbian ultimatum of 1914 and its immediate aftermath. National defence was also a common enterprise, with the emperor-king as the commander-in-chief and a minister of war exercising supervision over a military establishment in which Austrian and Hungarian units were embodied. How this bifurcated army acquitted itself in the war, and how the Germans had to stiffen it, every student of military history knows. Napoleon III once said, "Never go into partnership with a corpse." That, as it turned out, is what the Germans did in 1914. Finally, there was a joint budget, prepared by the minister of finance and voted by the two delegations. The necessary funds were not obtained by direct taxation under authority of the Ausgleich, but by the levy of customs duties and by calling upon the two countries for their apportionment quotas. In many other matters (*e.g.* the monetary system, the control of the railways and telegraphs,) common action was secured by the passage of identical laws in the two countries and not by action of the delegations.

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[1] On his accession he took two coronation oaths, one at Vienna as Emperor of Austria, and another at Budapest as Apostolic King of Hungary.

Its sources of weakness.

This intricate and somewhat emasculated duality was a source of weakness from every point of view. It satisfied only the dominant racial elements in each state, the Germans in Austria and the Magyars in Hungary. The subordinate races were grievously disappointed, for what they wanted was a federal empire, such as Germany became in 1871, with a considerable measure of home rule for Bohemia, Croatia-Slavonia, Galicia, Ruthenia, and the rest.[1] The dual empire was weakened by the irreconcilability of these nationalistic elements. It was also weakened, in its relations with the outside world, by the fact that two independent delegates had to be brought into unison on matters of foreign policy which, under the Ausgleich, they were able to control. Austria-Hungary, before the world war, was not held together by natural cohesive forces but by external pressure. Her existence as a duality seemed to be made imperative by the exigencies of the balance of power in Europe. Diplomats were in the habit of saying that if Austria-Hungary did not exist, Europe would have to create her.

The dual empire during the war.

It was the foreign office of this dual government that sent the ultimatum to Serbia in 1914 and thus precipitated the world war. During the early stage of this conflict Austria-Hungary maintained, outwardly at least, the semblance of complete harmony. All the rival races ceased their quarrels and threw their strength into the scale. But as the struggle continued, and as the hope of ultimate success disappeared, the symptoms of dissolution began to appear. Poles, Czechs, Slovaks, and Jugoslavs now came forward with demands for self-determination. In the early autumn of 1918 the emperor announced that Austria would become a federal state with local autonomy for all these races; but it was now too late. Hungary asserted that the Ausgleich was effective no more, and resumed freedom of action.

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[1] The dual government also controlled, under a sort of protectorate, the administration of Bosnia and Herzegovina, but in 1908 these provinces were annexed outright.

The débâcle of November, 1918.

One after another the various nationalities declared their independence and set up provisional governments. On the day of the German armistice, November 11, 1918, the emperor withdrew from participation in public affairs and a self-constituted council of Social Democrats at once proclaimed a republic in what was left of Austria. A temporary constitution was then promulgated for German Austria, while Hungary and the other portions of the old dual empire were left to shift for themselves.

The rise of the new states:

(a) The Austrian republic.

From the ruins of the dual empire, in whole or in part, six new states have arisen—Austria, Hungary, Poland, Czechoslovakia, Jugoslavia, and Rumania. The new Austria contains only seven of the old provinces, and not all of these are intact because some portions were annexed to the other states.[1] The population of this new Austrian republic is nearly seven millions, about one-fourth of the number that was included in the Austrian half of the dual empire before the war. Its boundaries were fixed by the Treaty of St. Germain and its new constitution, framed by an elective assembly, went into effect in 1920.

(b) The Hungarian kingdom.

Hungary, during the débâcle of November, 1918, was also proclaimed a republic and for several months was ruled by a provisional government. Then, for a brief interlude, it was replaced by a soviet government which endeavored to establish a dictatorship of the proletariate. With the aid of Rumanian troops, however, this soviet administration was ousted and a national government restored. A national assembly was elected by universal suffrage in 1920, but it did not frame a new constitution. It merely enacted a few constitutional laws in the effort to adapt the ancient constitution to the new order of affairs and declared Hungary to be a monarchy with the kingship in abeyance. Hence, in very considerable measure, the old constitution remains. Hungary lost a good deal of territory as the result of the war. Her population is now eight millions, about half what it used to be.

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[1] On the other hand, the territory of Burgenland, formerly a part of Hungary, is now largely incorporated in Austria.

(c) The Polish republic.

The new Poland is made up of territories wrested by treaty from three great pre-war empires—Austria, Germany, and Russia. Down to the last quarter of the eighteenth century, as everyone knows, Poland was an independent monarchy with that strangest of all executive headships, an elective king. In the old Polish parliament, moreover, there was a rule that nothing could be done, no tax levied, no law enacted, save by unanimous consent. Every member of the parliament had an absolute veto. He had merely to rise and say, "I object," whereupon a proposal could go no further. He could even compel a dissolution of the parliament by declining to attend its sessions. This absurd system engendered political stagnation, while the elective kingship, with its recurrent contested or indecisive elections, invited civil war and foreign aggression. The political history of Poland in the seventeenth and eighteenth centuries is replete with lessons to the student of modern government.

Poland had the misfortune to possess strong and avaricious neighbors. Frederick the Great of Prussia was particularly envious because some Polish territory which reached to the Baltic at Danzig intersected his own Prussian provinces. Austria and Russia were also casting lustful eyes upon the fertile Polish acres which lay contiguous to them. At any rate these three powers joined their forces and in 1772 accomplished the first partition of the country. Poland was considerably reduced in size; her elective kingship became hereditary, and the *veto liberum* was abolished. A second partition followed in 1793 and two years later the last remnants of the old monarchy were divided up. Poland, as an independent state, disappeared from the map. During the next hundred years there were nationalist revolutions which attempted to regain for the people their right of self-determination, but in every case they were put down and the tripartite domination of Poland by alien powers continued until the world war.

Proposals for the restoration of Poland were made from allied quarters during the course of the struggle, and after America's entry into the war this restoration was included by President Wilson in his famous statement of aims, commonly known as the Fourteen Points.[1] The victory of the allied and associated powers ensured the consummation of this design and in the settlements which followed the close of the war the territories which now form the Polish republic were consolidated. Meanwhile, on the collapse of the German and Austrian armies, a constituent assembly was called, and in due course a republican constitution was framed. The new Poland is made up of territories covering about the same area as California, with a population of about twenty-eight millions.

(d) The Czecho-slovak republic.

Czechoslovakia, the second of the succession states, includes the ancient kingdom of Bohemia, with the territories of Moravia, Silesia, and Slovakia. Prior to the war Slovakia was part of Hungary; the others were within the old Austrian empire. This new republic is a landlocked peninsula about six hundred miles in length, thrust westward into the heart of Europe. It has about fourteen million people within its borders, two-thirds of whom are Czechs, and its total area roughly approximates that of New York State. The independence of the Czechoslovak republic was proclaimed during the toppling days that marked the close of the war, and a provisional constitution was put into force about a month later. This provisional document was supplanted by a permanent constitution in 1920.

(e) The kingdom of Rumania.

(f) The kingdom of the Serbs, Croats and Slovenes.

Unlike Czechoslovakia, the kingdoms of Rumania and Jugoslavia are only in part succession states. Rumania, as she existed before the war, was enlarged by the addition of Bessarabia, Bukovina, and Transylvania, thus doubling her territory. Jugoslavia is the old Serbian monarchy, nearly trebled in size, and now officially known by a new name. Serbia was for a long time under the control of Turkey, but like the other Balkan States achieved its independence (1878). Outside her own boundaries, however, there remained large Jugoslav elements, especially in Austria and Hungary, and it was the hope of the Serbian leaders that these might by some means be federated with herself into a Greater Serbia. This nationalist aspiration was the taproot of the ill-feeling between Belgrade and Vienna, for it could never be brought to fulfilment without a disruption of the existing Hapsburg empire.

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[1] In 1914 the Grand Duke Nicholas on behalf of Russia promised the future liberation of the Poles, and in 1916 the German and Austrian emperors by a joint manifesto, proclaimed the independence of Poland; but these were meaningless gestures, because they neither determined Poland's boundaries nor designated the form of government that the country should have.

The allied victory gave the Jugoslavs their opportunity, and soon after the armistice they merged into the kingdom of the Serbs, Croats, and Slovenes. This, not Jugoslavia, is the official title of the state. After various boundary disputes had been settled, and after Montenegro had been added to the new state, the kingdom adopted a new constitution in 1921. This was framed, as in other succession states, by an elective assembly. The kingdom of the Serbs, Croats, and Slovenes has a population of about twelve millions, and an area somewhat larger than that of Kansas.

A survey of the new constitutions.

Now it is not practicable to attempt within the limits of the present volume a detailed analysis of the governments which have been set up in these six countries—Austria, Hungary, Poland, Czechoslovakia, Rumania, and Jugoslavia. It must suffice to point out, in a comparative way, some of the salient features in their several constitutions. Three of them are republics; three are constitutional monarchies. This differentiation, however, is of very slight consequence, for in all six states the government is presumed to rest upon the will of the people. The old classification of governments into republics and monarchies no longer serves much purpose.

In three of the six states the existing government rests upon brand new constitutions. Hungary, as has been pointed out, retains her old series of organic laws, although with some alterations. Rumania, in 1923, overhauled and revised her earlier form of government, making some important changes in it. The constitution of Jugoslavia is merely a revamping of the organic law on which the Serbian government was based before the war.[1] It is really not a new constitution at all but an old one, touched up and extended over new territories. Only in Austria, Poland and Czechoslovakia were new constitutions builded from the ground. In any event the new or revised constitutions were in every instance the work of constituent assemblies, the members of which were elected by the people except in Czechoslovakia, where the Czechoslovak national council nominated the members of the provisional national assembly. No one of the new constitutions was submitted to the people for ratification or rejection; in each case the document was adopted and made operative by the assembly that framed it.

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[1] This, in turn, was fashioned on the constitution of Belgium, and the latter, again, was a heavy borrower from England.

An outstanding feature of these new constitutions is their length. The constitution of Czechoslovakia would occupy thirty pages of this book, while that of Austria would fill about fifty. The Polish constitution is much more concise than the others, but even so it is a good deal longer than the constitution of the United States. This prolixity is not due to the greater elaborateness of governmental machinery in the various countries. It results from the incorporation of numerous clauses relating to the rights of citizens and to the new economic organization. The insertion of these clauses represents an endeavor to deal with certain fundamental problems of economic life which came quickly to the forefront in the disorganization of the post-war era. Throughout Europe, during the years since the armistice, politics and economics have become commingled. They are interwoven in a way that defies segregation, even in the organic law of the state.

How the new constitutions may be amended.

The amending process may fairly be called the most important feature of any constitution. The purpose of a constitution is to preserve order, but it cannot preserve order unless it promotes progress—and it cannot promote progress unless it is capable of being amended either formally or by judicial interpretation to meet the new needs that arise. A constitution should not be too easy to amend, for in that case it will fail to secure order, stability, and continuity in the nation's political life. Nor, on the other hand, should it be too difficult to amend, for it will then clog the wheels of political progress and serve as an incentive to coups d'état or revolutions. The ideal amending process is one that assures stability without impeding the normal development of political and economic activities among the people. On this general principle all makers of constitutions have been substantially agreed, but they have been far from agreement as to the methods whereby the ideal can be attained.

Among the six countries now under consideration, the constitution of Hungary alone can be amended by the ordinary process of lawmaking, as in England or in Italy. In Austria the new constitution provides that amendments may be made by a two-thirds vote of the House of Representatives (Nationalrat) provided one-half the total membership is present. Such amendments must be submitted to the people, however, if a referendum is demanded by one-third of the members of either chamber in the Austrian parliament. A complete revision of the constitution requires, in all cases, a ratification by popular vote. In Poland a motion to change the constitution must be signed by at least one-fourth of the membership of the lower chamber. It then requires, for adoption, a two-thirds majority in both chambers, with at least half the entire membership present. But provision is made for a general revision of the Polish constitution every twenty-five years by the two chambers meeting in a national assembly (as in France) and taking action by majority vote. In Czechoslovakia the assent of both chambers is essential for the adoption of a constitutional amendment, but ordinary laws may, under certain conditions, be enacted by the lower chamber alone. Finally in the kingdom of the Serbs, Croats, and Slovenes (Jugoslavia), there are two alternative modes of amendment. If the proposal is made by the king, on the advice of his ministers, it cannot be acted upon until a new national assembly has been elected. Then it may be ratified by a majority of the total membership. But if the proposal emanates from the national assembly it may be voted by a three-fifths majority of the total membership in that body. Such adoption operates as a dissolution of the chamber, however, and the new assembly may then ratify by a majority of its entire membership.

It will be seen, therefore, that the American plan of having amendments ratified by the state legislatures, or by conventions specially called for the purpose, or by direct vote of the people, did not find favor in any of these new states of Central Europe as the normal process of changing the constitution. In all of them the national legislature has been given power to amend the constitution, but (save in Hungary) under varying restrictions. It is not that the framers of these constitutions were unfamiliar with the three American methods of constitutional amendment and revision. They had our long constitutional experience before their eyes. But they evidently were not impressed to the extent of giving it the flattery of imitation.

All of these six states have made provision for a unitary executive. The Swiss collegial system of executive headship did

The executive organization.

not meet with endorsement in any of them. Jugoslavia and Rumania have monarchs; Hungary has a regent; the other three countries have presidents. In Rumania and Jugoslavia the kingship is hereditary, the succession being confined to male heirs of the pre-war dynasties. In Hungary the new parliament, elected in 1920, merely dethroned the Hapsburgs and appointed Admiral Horthy to act as chief of state, with the title of regent, until such time as the national assembly could settle upon a new monarch in tranquillity. In Austria, Poland, and Czechoslovakia the president is chosen by the two chambers of the national parliament sitting in joint session. In this, all three countries followed the French practice. The presidential term is four years in Austria, seven years in Poland and Czechoslovakia. In Poland there are no limits upon the re-eligibility of a president, but in Austria and Czechoslovakia he must not hold office for more than two succesive terms.

None of these constitutions embodies the American principle of separation of powers.

The powers of the chief executive vary considerably in these six countries, but in all of them he must be guided by the advice of his ministers. These ministers, although appointed by the chief of state, are definitely responsible to the representatives of the people. Herein is seen the complete triumph of the French over the American example. There was nothing to prevent Austria, Poland, or Czechoslovakia from basing their new governments upon the principles of separation of powers, making both the president and the legislature directly responsible to the people and largly independent of each other, as they are in the United States. Indeed it might have been assumed that in their reaction from the oppressions of the old régime they would have sought to insure themselves against further tyranny in this way. But they did nothing of the sort. They chose, one and all of them, the *parliamentary* system of government, with its centralization of ultimate power in the legislative body, this legislative control over the executive to be maintained by insistence upon ministerial responsibility. Under their several constitutions the chief of state will not, in normal times, possess independent authority of any consequence. Large powers, to be sure, are vested in him by the phraseology of the constitutions, but the requirement that he must exercise them on the advice of responsible ministers is bound to operate as an impairment of them all. Whether it will reduce the chief of state to a figurehead, as in France, will depend upon the rigor with which the principle of ministerial responsibility is applied, and that is something which cannot be figured in advance.

The new parliaments.

In four of these countries there is provision for a bicameral parliament; Jugoslavia having decided to continue as before with a single chamber, and Hungary having left the question in abeyance for the moment.[1] This single chamber in Jugoslavia, and the lower chambers in the other five countries, are all constituted in substantially the same way; namely, by popular election based upon universal suffrage. Save in Hungary the elections are conducted according to the principles of proportional representation.[2] In the other countries the electoral mechanism was for the most part left to be determined by law, hence there are numerous differences in the methods of proportional representation used. Members of the popular chambers are chosen for varying terms—four years in Austria and Jugoslavia, five years in Hungary and Poland, six years in Czechoslovakia—but in every case there may be a dissolution of the house, by decree of the chief executive (on the ~~advice of his ministers~~) before this full term has expired. Whether this prerogative will be used frequently, as in England, or not at all, as in France, is something that must be left for the future to disclose.

The second chamber problem.

The question of a second chamber gave Austria, Poland, and Czechoslovakia a good deal of difficulty; in Hungary it is still an unsolved problem. Austria finally adopted the plan of having a secondary chamber (Bundesrat) made up of members chosen by the various provincial or state legislatures—much as was done in the United States before the adoption of the seventeenth amendment. But the Austrian states are not equally represented in this second chamber; the quota of members from each province or state is proportioned to their population.[3] The Rumanian senate is made up of three elements, elective, ex-officio, and life senators. In Poland and Czechoslovakia the members of the second chamber are directly elected by the people, but with a higher age limit for voting than that prescribed in the case of elections for the other house. The age limit is thirty years in Poland, and twenty-eight years in Czechoslovakia.[1] This method of forming two distinct electorates, based upon difference in age, is intended to secure a parliament in which both chambers shall be equally responsive to the popular will but shall nevertheless represent different constituencies among the people. It is said to be an axiom of group psychology that age and experience give sobriety to opinion. The requirement that upper-house voters shall be older than the general run, and members in the upper chamber also older on the average than in the lower house, is being counted upon to make the second chamber in these two countries reflect the more mature aspects of the popular will. It is a novel experiment and an interesting one.

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[1] The Table of Magnates has not been formally abolished, but for the present it refrains from functioning. It should be mentioned that some other European states, including Finland, Esthonia, Bulgaria, and Turkey, have also adopted the single chamber system.

[2] In Hungary, proportional representation was not used at the election of the first national assembly in 1920, but in 1922 it was established for the city of Budapest.

[3] The Bundesrat now contains forty-six members divided among the nine provinces or states. The city of Vienna constitutes one of these and has the largest population of any.

Functions of the second chambers.

Second chambers in Europe have become secondary chambers. In Austria, Poland, and Czechoslovakia the constitutions do not attempt to put the two chambers on the same plane. The provisions which set forth the relations between the two houses are too intricate for elucidation here, but one thing they have in common; namely, the design to make the more popular chamber dominant both in lawmaking and in the supervision of executive policy. Almost necessarily so, for having decided upon a parliamentary form of government, with ministerial responsibility, it is impracticable to make the two chambers coequal in authority and in influence. A ministry responsible in full measure to both chambers is an unworkable institution, for neither ministry nor man can serve two masters. One chamber must be vested with the chief control of ministerial policy, and when so endowed it is bound to become the dominant branch of parliament, no matter what the wording of the constitution may be. This lesson of modern political history was not lost upon the framers of the new European constitutions. They gave the secondary chambers the right to be consulted, the right to delay, and under certain conditions the right to reject proposals of legislation; but they also provided means whereby the primary house, if fairly well united within itself, can make its will effective.

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[1] There is also an age-limit for membership in the second chamber—forty years in Poland and forty-five years in Czechoslovakia.

The spread of proportional representation.

Attention may well be drawn to the extraordinarily wide acceptance which the principle of proportional representation has managed to gain in these various post-war constitutions. Prior to the world war this system of electing legislators was not used in any of the greater European countries.[1] Today it is operating in most of them, with a probability that it will be extended to the rest.[2] The chief reason for this rapid extension may be found in the desire of statesmen to provide the minority elements with some means of voicing their sentiments in the national halls of legislation. For many years Europe had been wrestling with the problem of satisfying these minority races and factions, but with no marked success, as was demonstrated by the strong groups of irreconcilables in every continental parliament. As a solution of the problem the socialists kept urging the principle of proportionalism, and after the war they were in a position to make their demands effective. It was their contention that if a lawmaking body must be made up of factional groups, as seems inevitable in continental European countries, these groups ought to reflect with reasonable accuracy the divisions of political sentiments among the people.

Now asuming that no political party is able to control a majority in the legislature, and hence that some plan of bloc government is inevitable—if we begin with this assumption, the logic of proportional representation is puncture-proof. For it is the essence of representative government that it shall represent, and represent faithfully. To this end it should not give over-representation or under-representation to any element among the voters. But how can absolute fidelity of representation be secured? By what method of counting votes? The various new constitutions did not attempt to answer this question in any explicit way. They merely laid down the general stipulation that members of the lower chamber should be chosen according to a proportional system and left the details of electoral procedure to be worked out in each country by the legislature itself. Consequently each of the various countries has provided itself with a somewhat different scheme of proportional vote-counting. There is very little similarity, for example, between the French and the German plans as they have been evolved in detail, or between the Danish, Belgian, and Polish methods. In other words there has been a broad acceptance of proportional representation as a principle, but no consensus of action upon it as a device. At least a half dozen different schemes are now undergoing trial and there is as yet no way of telling which of them is the best.

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[1] Save in certain local elections.

[2] It is being used in Germany, France, Austria, Poland, Czechoslovakia, Rumania, Jugoslavia, Switzerland, Holland, Denmark, Sweden, Portugal, Greece, Bulgaria, Finland, Latvia, Lithuania, and Esthonia.

Visible and invisible institutions

There is one thing which the student of comparative government ought always to bear in mind, but sometimes does not. It is this: A government is like an iceberg in that the greater part of it is under the surface and hence invisible to the onlooker. Yet it is this invisible portion that upholds the superstructure. Without it the latter would quickly be submerged. So, when you compare the constitutions of Poland and Czechoslovakia, for example, and contrast the framework of government in these two countries, do not forget that you are dealing only with superstructures and not with foundations. It is customary to speak of a constitution as the basis of government, but the real basis, as a matter of grim actuality, is the mass of traditions, usages, racial traits, party tendencies, popular ideals, and aversions—most of them invisible to the naked eye. It is on these that the constitution rests. It is from them that it draws its elements of strength or weakness. Of itself a constitution has no virility. Hence it avails little to frame a constitutional guarantee for the rights of minorities unless there is a tradition of tolerance underlying it. Nor does it profit much to stipulate that there shall be full ministerial responsibility if the legislative body (to whom the responsibility accrues) is so disintegrated by racial factionalism that it can never hold itself, much less hold the ministers, to a consistent line of policy. For that reason the forces which determine the integration or disintegration of political parties are the most important of all the factors affecting the success or failure of a government. There can be no full understanding of any political system without a knowledge of political parties and party programs.

The driving forces.

Now what are the driving forces behind these new governments of Central Europe? Some are racial. In virtually all these countries the body politic is erected on a foundation of ethnic diversity. This diversity is in many cases so pronounced, and so surcharged with animosity, that it absolutely precludes a welding of the electorate into two great party groups. It makes factionalism inevitable. Nor is this the only sinister influence. Historic antipathies arising out of class diversities are also at work in the same direction. Economic intolerance, the class-consciousness of landowners, bourgeoisie, peasantry, and proletarians, is a disintegrating force of insuperable power. It is difficult for an American to appreciate the abysmal intolerance—racial, religious, cultural, geographical, economic, and personal—which saturates the whole electorate of these six countries. Yet without an appreciation of it there can be no clear grasp of the difficulties with which these new governments have to contend. It is easy enough to declare in the bombast of a new constitution that "all citizens shall be in every respect equal before the law, and shall enjoy equal civic and political rights whatever be their race, their language, or their religion";[1] but what does it amount to, after all, if there be no diminution in the historic hatred of one element toward another? What does it avail, if the lust for oppression continues unabated.

It is often said that the men who are best fitted to start a revolution are the ones least fitted to finish it. Tearing is easier than rearing. Wreckers do not make good architects. In the countries of Central Europe the various revolutions were inaugurated under the leadership of the radicals, the extremists of the Left, the *démolisseurs,* who drove ahead furiously so long as their task was merely one of razing the old political structure. For the moment these apostles of the new order seemed to have unified the whole people. But they soon came face to face with the far more difficult problem of constructing a new edifice, and for this they were equipped neither by temperament nor by experience. Thereupon began a swing to the Right, and leadership gradually passed into more moderate hands. With each step in this change the old party alignments of pre-war days have come more clearly into view; the old issues and organizations have been revived under new names; and the old centrifugal forces have again flared up in all their virulence.

A word in conclusion.

Our colleagues in the laboratories sometimes tell us that political science is not a science at all because it does not lend itself to the experimental or laboratory method. Yet the reader who has been patient enough to plough his way through the seven hundred and sixty pages of this book will probably concede that government is nothing if not experimental and that the world surely looks like a vast laboratory of politics. Everywhere the process of experiment with new forms of government, new political institutions, methods, and machinery is going on, day after day and year after year, in ceaseless round. Every political theory that the human mind can suggest has had, or is having, its trial somewhere. The astronomer who scans the heavens with his telescope commands no more interesting or varied panorama of change than does the observant layman who merely watches with an objective eye the political activities of mankind. Nor does he see things half so dramatic as those which the student of political science has witnessed during the past ten years. In this one decade we have watched proud empires pass away, emperors flee across the border and czars go to their doom, republics arise overnight, new constitutions appear, new and strange parliaments assemble, proletarians mount thrones, or assume dictatorships in the people's name, new social orders emerge, fantastic devices commence to function as handmaids of democracy, a league of nations born to bring peace on earth, while a great soviet commonwealth flames like a red sunrise against the eastern sky. All this, and more, we have seen and are seeing.

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[1] Constitution of Czechoslovakia, Article 128.

Will democracy endure?

Today we see democracy triumphant, but a study of its varied manifestations can hardly help prompting the query whether there is or ever can be, any approach to finality in governments or political institutions. May it not be that even democracy, which the world has acclaimed as the solvent of all political ills, is but a milestone on the way to something else? In all human probability it must be so, for we know that the thing that hath been is not, and we may be equally certain that the thing that is will not endure. "Remove not the ancient landmark which thy fathers have set," is a venerable injunction, but a very profitless one as all history attests. That which a Greek poet once said of the human intellect,—that it changes with every round of the seasons, is true of the national will as well. It is true of all the handiwork of man, including the institutions that he creates. The "law of the pendulum," as Lord Salisbury once called it, is incessantly in play.

When, therefore, we study a government of today we are merely dealing with a single link in the great chain of political causation. What form it may take tomorrow we do not know, and cannot safely conjecture, for in political science we deal with imponderables, not with constants or with things that are reducible to a common denominator. We cannot tell whither democracy is leading us; we only know that it is leading us somewhere, and doing it fast. Someone has said that democracy is urging the world into a race between education and disaster, for a ballot is about the most destructive weapon that can be put into the hands of any unlettered man. Europe has placed it in the hands of millions. What use or abuse will they make of it? When the roaring loom of time has finished the popular jazz-pattern on which it is now at work, with its warp of equality and its woof of self-determination, what new fabric will it start to weave?

The constitutions of Austria, Poland, Czechoslovakia, and Jugoslavia may be found (translated into English) in H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1922).

Full descriptions of the new governments of Austria, Hungary, and the succession states are given in Malbone W. Graham's *New Governments of Central Europe* (New York, 1924).

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